THE LAW

THAT NEVER WAS

VOL. I

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The Law That Never Was

— The fraud of the 16th Amendment and personal Income Tax —

by

Bill Benson and M. J. 'Red' Beckman

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Published by
Constitutional Research Assoc.
Box 550
South Holland, IL 60473

Printed in the United States of America

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Preface

Liberty is not free but it is a bargain compared to the cost of slavery. In the United States of America today, we pay for our slavery with tax audits, assessments, levies and seizures, with imprisonment and with fear. Mankind has been tormented and plundered by tyrants throughout his tenure on this planet. These tyrants have made proclamations, issued decrees and written statutes in order to bleed the people of their productive and creative powers. The tyrant uses this power to become an uncontrolled monster. The people are the only source of power for any governmental official, so, it is of utmost importance that the people limit the power which they give to anyone who would act in that capacity. The survival of a people and their nation depend upon their resolve to enforce these limitations.

If people, or those who govern them, try to live without the limitations of true law, they are guilty of anarchy. True law is that Law of God which must guide all productive and peaceful societies. Truth, justice, morality and respect for the life and property of the individual are primary ingredients of true law. The opposite of true law is the perversion of the true law, in which all tyrants revel. The bloody tracks of tyrants walk across the pages of history in an unending scenario. Perversion of true law is the source of power which has allowed all tyrannical outlaws to loot, plunder and murder untold millions of helpless people.

The great men who fought and won the American Revolution understood so well the difference between the true law and its perversion. They had experienced the treachery of King George III and they paid a high price to rid themselves of his lawless perversions. They not only gave us a legacy of liberty but they gave us of their great wisdom. They told us that, 'eternal vigilance was the price that must be paid if we were to maintain liberty.' In recent times, we have not been paying the price of liberty and we are being forced to pay for our lack of viligance in slavery. The Internal Revenue Service uses the tool of fear to control and rob the people. If we do not pay the price of liberty on a voluntary basis, the price of slavery is mandatory! We did not take advantage of our forefathers' gift of wisdom, so we are now learning from bitter experience the value of liberty.

The productivity of this nation is being plundered by tyrants employing a perversion of true law. The material in this volume is the documented evidence of the betrayal of our trust and confidence by governmental officials. Tax-consuming public servants have been administering and enforcing a law which existed only because no one was paying the price of liberty. Our great nation has become a victim because we have slept.

Our founding fathers knew from history that wicked men wielding the power of government have always been man's worst enemy. This motivated them to create a form

of government which could be controlled by the people themselves. People, who put their trust and confidence in corruptible governmental officials, will not be able to control their tax-consuming public servants. With a knowledge of history, no sane person could ever trust any person wielding such power. Suspicion and distrust of men and women who hold power are the fertile ground from which vigilance grows and blossoms. The Constitution of the United States of America was created and ratified as the Supreme Law of the land by men who did not trust anyone to resist the temptation to misuse the power of government. Our Constitution created a form of government in which we might have a nation of 'law' not 'men.' And, formerly, we have thrived and became great under a rule of true law.

Now, however, we face an uncertain future because our people have come to trust and depend upon govermental officials to solve all of life's problems. Self reliance has become old-fashioned or archaic. We failed to comprehend how our own money is used against us to seduce us and fool us. The same enemy that destroyed the Roman Empire has now invaded and conquered the minds of millions who are now addicted to the drug called 'government money.' The productive have become a minority and the perversion of law has become the tool of plunder in the hands of a consumptive majority. Our perception of government has regressed from distrust to trust and we are now paying for slavery rather than liberty.

An uninformed, or misinformed populace, cannot remain free for very long. We have tried to do our part to be vigilant and this book is part of the price that we have paid to redeem the birthright of liberty which belongs to everyone in this nation. The material in this book, hopefully, will shock you and, then, motivate you to become an active and vigilant guardian of that birthright of liberty. We must be optimistic about our nation's future as long as the truth can be broadcast about. Truth is the antidote for the perversion of the true law. If you agree that this nation is worth saving, become a guardian of liberty and insist that your public servants serve you and not vice versa.

M. J. "Red" Beckman,
Montana's Fightin' Redhead

Special Thanks to Lorraine and Earlene

These are the women who have continued to live with and encourage Bill Benson and Red Beckman. Both of these great gals have been exposed to the stress of living with husbands totally involved and committed to the restoration of lawful government. These women have patiently listened to the sounds of a struggle between monster government and the men they married.

These are women who have been married to their men for over thirty years. Both are grandmothers and it is to their credit that they recognized the importance of digging out the truth of the Sixteenth amendment. Now they have been able to participate in the creative process of publishing this book.

Bill and Red want their wives to know how grateful they are and they want their grandchildren to know that these two grandmothers are something special.

It was no small task for Bill to travel to the forty-eight contiguous States. He was away from home for many weeks while Lorraine maintained the home base. As this evidence is introduced in the Courts, it will mean more travel and time away from home for Bill. There will still be a price for Lorraine, but the excitement that goes with success will make it easier to pay.

Red's wife Earlene, has taken her man to the airport many times but she also travels along a great deal. This book would not have gone together as neatly and as quickly as it has, without her hard work. Ten years of mental combat with a monster, called the I. R. S., has not altered or changed her support of 'Montana's Fighting Redhead.'

Bill Benson and Red Beckman are better men for having been loved by these two great women. This book would not be in your hands if it were not for Mrs. Bill Benson and Mrs. Red Beckman.

Thank You Lorraine.

Thank You Earlene.

Bill and Red

A Special Thanks to George Sitka

This man helped speed the search for truth with generous contributions of funds. The largest gift to this research project came from George Sitka. He was motivated to give by many of the same forces which have stimulated others to battle the I. R. S. monster. George is a successful businessman who knows how the I. R. S. can destroy people.

George Sitka lives in Connecticut and he was involved from the very beginning as Bill started his research in the east and northeast. Bill was able to help George with his own personal I. R. S. problem.

This businessman gave to this research because he knew it was a good investment. There were many people who did not contribute to this project because they did not comprehend the potential return. It is to George Sitka's credit that he gave to this cause rather than pay a lawyer to help lose his battle with the I. R. S. It is to his credit that he was shrewd enough to know that a gift to make this research possible was good business.

George is the father of three children that he is very proud of and they should be proud of him. What George Sitka has given to make this project possible will ensure his children the freedom to enjoy the estate he is creating for them. Liberty is the greatest inheritance that anyone can leave to his children. Bobby, Elizabeth and David have a dad who has given as an investment for their future.

Thanks George Sitka.

P.S.

David Sitka traveled with Bill to eight States. His company and assistance was helpful and very much appreciated.

Special Thanks to Jay Linn

Jay made a contribution which deserves recognition by the readers of this book. When Bill Benson began his research in the western States, he needed a private plane and pilot to expedite the process. There were great distances to travel and poor commercial airline connections to contend with.

Jay met Bill in Cheyenne, Wyoming in early October with his own twin engine plane. They had problems with bad weather but they were able to finish eleven western States in very good time.

Bill Benson and Red Beckman wish to thank Jay Linn for making himself and his plane available at a cost barely above his expenses. Jay is only twenty-two years old but he was a very good pilot and a helpful companion to Bill. Without Jay's participation this project would have been considerably more tiring and expensive.

Thank You Jay Linn.

Special Thanks to Mark Sato

Bill Benson and Red Beckman have their names on this book as co-authors but many people made great contributions of time and labor. To Mark goes the honor of having been the most help in a very positive way.

Mark put himself and his IBM computer at our disposal. He spent many days and nights reading and digesting most of the material in this volume. The narratives of the States are all on computer discs because Mark is an exceptional researcher as well as a master text composer at his computer keyboard.

Mark is a committed and dedicated American Patriot. His attractive wife, Laura and small son, Mark, Jr. did not see much of Mark, Sr. for about three months while this book was being put together. Mark's talent as a legal researcher made him the man of the hour as he studied and analyzed thousand of documents. His contribution to this book cannot be measured.

The typesetting of this book was made easier because Mark's computer was simply plugged into a typesetting computer. This saved a great deal of time and money. Modern technology is not the strong suit of the authors, so Mark was a handy man to have around.

Mark will find himself speaking to groups and perhaps testifying in court. Next to Bill, he now has the best knowledge of the Sixteenth Amendment documentation. This book will reflect his skill and dedication.

To Mark Sato with thanks and appreciation for a job well done.

Bill and Red

Introduction

James T. Moody sits as a judge in the Federal District Court in Hammond, Indiana. His courtroom was the scene of the Federal income tax trial of Allen Lee Buchta in June of 1983. Judge Moody didn't know he was to have a hand in the creation of some important history. Indeed, he will become more and more notorious as this book is read by more and more people.

Mr. Buchta's story has its beginnings in a one-hour TV special entitled, "People Controlled Government," produced and sponsored by M. J. 'Red' Beckman (the co-author of this book) of Billings, Montana. That TV special was telecast by a station in Great Falls, Montana in April of 1980. Sam Bitz, a Montana businessman, involved himself in the process of researching our nation's history, particularly the history of our political system, after having watched "People Controlled Government." His involvement led to the formation of a group which called themselves the "Montana Historians."

The farmers, ranchers and business people, who comprised the "Montana Historians," began researching and investigating many different areas of political concerns. One of their major concerns was the Sixteenth Amendment to the Constitution of the United States of America. The question to which they wanted to find an answer was whether this Amendment had been properly and lawfully legislated and ratified. And, so, they began researching this subject.

By the fall of 1981, they had gathered evidence indicating that many of the States had not properly ratified the Sixteenth Amendment. The evidence that they had gathered raised doubts of whether the Sixteenth Amendment and the personal, direct, progressive income tax which was based upon that Amendment were valid.

If the Internal Revenue Service had no law with which to work, Judge Moody was presiding over the criminal trial of Allen Lee Buchta without jurisdiction. This trial was unique because, in effect, Judge Moody's attitude toward the truth was also on trial. Red Beckman was called as a witness by Mr. Buchta's defense counsel, Andy Spiegel, who questioned Mr. Beckman about the Sixteenth Amendment and brought forth statements, based upon the work of the "Montana Historians," which should have given any honest judge reason to halt the proceedings until a further investigation could be made. Instead, Judge Moody used the Rules of Evidence to block any further use of that material, saying that the documents were not certified and notarized and that there was no one available to testify to the verity of those documents. Even though Judge Moody refused to consider those documents, or to do anything further about them, he retains possession of that material, some twenty-one months later, and will not return the file to the "Montana Historians," as is ordinary and proper. That file consists of over

four hundred pages of material in separate folders for each State. As the first Federal judge to be confronted with the opportunity to deal with this Sixteenth Amendment documentation, the verdict on Judge Moody's disdain for the truth will soon be in.

The Rules of Evidence are not meant to keep the truth from being heard—they are meant to ensure a fair trial. With the documentation presented that day, Judge Moody must have known that something was seriously wrong with all criminal income tax trials, and with the income tax generally.

When judges swear to uphold the Constitution but they only uphold the opinions of other men in black robes, they have failed in their duty. We must have a government of Law, not men. When men rule outside of the Constitution, the Constitution, obviously, will not be allowed as a defense in court. Only the opinions of judges will be allowed if a judge so orders. Many judges become dictators, as Judge Moody did in this historic I. R. S. case. He kept the doors to the courtroom locked to prohibit free entry or exit. He would not allow Mr. Beckman to stay in the courtroom after he had finished his testimony. Judge Moody had an opportunity to rule in favor of truth. Reasonable doubt as to the legality of the I. R. S. code was presented in his court. Judge Moody had an opportunity to become a famous and great American if he only had been courageous enough to pursue the ramifications of what had been presented by Mr. Beckman. Judge Moody missed that opportunity and this book will expose him as just another dishonest lawyer who performed his political chores in exchange for a black robe and a comfortable position. This book would not have been needed had the legal profession, including the judges, been as diligent in determining whether or not innocent people were being sent to prison lawfully, as they were in sending those people to prison.

One of the participants in Mr. Buchta's case was a paralegal assisting Andy Spiegel, named Bill Benson. Judge Moody explained that he would not accept the Sixteenth Amendment file as evidence because it was not certified by the various keepers of the records. The defendant was found guilty and Judge Moody sentenced a man to prison on what was surely questionable grounds at that point. Judge Moody did not know that the Internal Revenue Code was law, he could only believe that it was law. Judge Moody was, thus, guided by belief rather than law and fact.

This book, "THE LAW THAT NEVER WAS," has come into being because Bill Benson saw and heard all that transpired that day in court. He knew that the truth of the Sixteenth Amendment had to be determined once and for all and that the only way to do that was to go to all the States which had been States at that time, whether a particular State had ratified or rejected, and thoroughly and objectively research the ratification process of each one and to research the National Archives in Washington, D. C. as well. Red Beckman supported and encouraged Bill's effort all the way. Certified documents relating to the ratification of the Sixteenth Amendment have now been collected, after Bill spent most of 1984 traveling to the forty-eight contiguous States and to the Capitol in Washington, D. C. Thousands of documents were researched, copied and certified. Some States charged up to ten dollars per page for certification. Bill put together the most complete set of documents ever assembled by anyone on the ratification of the Sixteenth Amendment. These documents indict Judge Moody and every other Federal Judge in the nation. The people who read this book will be the jury that will convict Judge Moody and his partners in crime.

Most of those who were sent to Nazi concentration camps were tried by judges who

enforced perverted and false laws. Many of our most well-informed patriotic Americans have been sent to Federal prisons by lawless judges. Those who have been indicted, prosecuted and jailed because of a LAW THAT NEVER WAS must be vindicated.

Any judge who has taken jurisdiction in an I. R. S. tax case will experience the embarassment and humiliation they deserve. They will try to excuse themselves by saying they did not know the Sixteenth Amendment was a fraud. We shall remind these pious outlaws in black robes that 'ignorance of the law is no excuse.' These Judges have ruined the lives, families, businesses and future of untold thousands of people because they were ignorant of the law! If the language and tone of this introduction sounds too harsh, dear reader, then we ask you to consider the price paid by the victims of the THE LAW THAT NEVER WAS.

Be aware that a new page is being written in American history. Since 1913, our nation has been controlled by a few individuals exercising power stolen from we, the people. Politicians have been violating their campaign promises with impunity. Tax-consuming public servants have become arrogant, wasteful and corrupt. A monstrous national debt is the welcome mat that greets our newborn children and grandchildren. Politicians who violate their campaign promises are dishonest and irresponsible, acting as though they are accountable to no one.

This book, more than anything else, demands an accounting by those who thought they were not accountable. Bill Benson has paid the price necessary to bring our unfaithful servants to trial in the greatest court of all. The people must judge the performance of Judge Moody and all other Federal judges. The same court must examine the evidence which will expose the treachery of our politicians. The generations to come will be slaves to tyranny, if this great court fails to judge and punish the guilty. This book is published and made available to this great court as 'Exhibit A.' You, the reader, will be the judge and jury that will be responsible for a verdict!!

Bill Benson and Red Beckman were in Judge Moody's court June of 1983 and this book is the result of that encounter. We will not dedicate this book to Judge Moody, but we will say a qualified 'Thank You.' We in no way condone or endorse his conduct but his disdain for the search for truth was a contributing factor in the research which went into this book. In that Judge Moody has been proven to be lawless, so, also, is every other Federal judge, including the Supreme Court. If Judge Moody had no law, then it is anarchy whenever he sends so-called income tax protestors to jail.

King George III called our founding fathers tax protestors and sentenced them to jail. Two hundred years later Judge Moody called Allen Lee Buchta a tax protestor and sentenced him to jail. This book exposes Judge Moody as the outlaw and Allen Lee Buchta as a hero and patriot. The tax protestor will be the great American hero of 1985 just as in 1776. It was tax protestors, not any political party, or judge, or prosecutor, who gave us our great Constitutional Republican form of government. The tax protest is more American than baseball, hot dogs, apple pie or Chevrolet!!

The Golden Key

When Bill Benson had finished researching the ratification of the Sixteenth Amendment in twenty-eight States, the evidence from those States indicated very clearly that a great deal was amiss in the entire process of ratifying the Sixteenth Amendment. Documentation sent from the States to the Secretary of State in Washington, D.C. had to be found in order to try to pinpoint the source of the problems. Bill decided to travel to Washington, D.C. to attempt to locate some of material referenced in the States.

Poking about in the basement of the National Archives is something like poking about in the Great Pyramids. Bill, as any good archaeologist would, unearthed some astounding documents out of the history of our nation. He is probably the first individual to look at these artifacts in over seventy years. This material contains the evidence of malpractice and fraud by attorneys, judges and politicians.

The most damning of this evidence is contained in the memorandums of the Solicitor of the Department of State. The Solicitor of the Department of State was the general counsel of that department. His duty was the provision of legal opinions, which were submitted in the form of memorandums, for the use of the Secretary of State and of the Secretary's staff. Such memorandums were the basis upon which Philander Knox felt that he could be justified in proclaiming the Sixteenth Amendment properly and duly ratified.

Political malpractice has never been so well defined and the evidence so conclusive as in these memorandums, the most significant of which is reproduced hereafter from the original. As you read the next sixteen pages, you will be amazed at the lack of due care in their duties and responsibilities by the people who called themselves government. The memorandum, which you are about to read, should cause the people of this nation to realize that politicians and public servants can never be trusted.

The Solicitor's memorandum is an historical document from which we can all learn. Bill Benson and Red Beckman cannot restore our Constitutional government of laws without the assistance of their fellow Americans. Learning is the beginning of responsibility!! If we learn and do nothing, we are irresponsible.

Bill has called this particular memorandum the 'Golden Key' and we believe you will agree. It unlocks a Pandora's box of criminal fraud perpetrated by public servants, who betrayed the trust of their masters. Any public servant who attempts to cover up this crime, these seventy odd years later, will be guilty of the obstruction of justice. As you read this memorandum, remember how the I.R.S. demands absolute accuracy on a 1040 income tax return.

Memorandum of the Solicitor, February 15th, 1913

FEB 25 1913

DEPARTMENT OF STATE

OFFICE OF THE SOLICITOR

CHIEF CLERK
FEB 27 1913
DEPT. OF STATE

MEMORANDUM

February 15, 1913.

Ratification of the 16th Amendment to the Constitution of the United States.

The Secretary has referred to the Solicitor's Office for determination the question whether the notices of ratifications by the several states of the proposed 16th amendment to the Constitution are in proper form, and if they are found to be in proper form, it is requested that this office prepare the necessary announcement to be made by the Secretary of State under Section 205 of the Revised Statutes.

The 61st Congress of the United States, at the first session thereof, passed the following resolution which was deposited in the Department of State July 31, 1909:

> "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:
>
> "Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.'"

On July 27, 1909, the following concurrent resolution was passed by Congress:

> "Resolved by the Senate (the House of Representatives concurring), That the President of the United States be requested to transmit forthwith to the executives of the several States of the United States copies of the article of amendment proposed by Congress to the State legislatures

to amend the Constitution of the United States, passed July twelfth, nineteen hundred and nine, respecting the power of Congress to lay and collect taxes on incomes, to the end that the said States may proceed to act upon the said article of amendment; and that he request the executive of each state that may ratify said amendment to transmit to the Secretary of State a certified copy of such ratification."

On July 26, 1907, being the day before the above resolution was passed, the Secretary of State sent to the Governors of the several States certified copies of the joint resolution of Congress proposing the 16th amendment to the Constitution with the following letter of transmission:

"I have the honor to enclose a certified copy of a Resolution of Congress, entitled 'Joint Resolution Proposing an Amendment to the Constitution of the United States,' with the request that you cause the same to be submitted to the Legislature of your State for such action as may be had, and that a certified copy of such action be communicated to the Secretary of State, as required by Section 205, Revised Statutes of the United States. (See overleaf.) [Note: Reference here is to R. S. Sec. 205 which is quoted infra.]

"An acknowledgment of the receipt of this communication is requested."

Section 205 of the Revised Statutes provides:

"Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States."

The Department has received information from forty-two states with reference to the action taken by the legislatures of those states on the resolution of Congress proposing the 16th amendment to the Constitution. It appears from this information that four states (Connecticut,

New Hampshire, Rhode Island, and Utah) have rejected the amendment. The remaining thirty-eight states have taken action purporting to ratify the amendment, the State of Arkansas being one of these states. Although the Governor of Arkansas had previously notified the Department that the legislature of that state had refused to ratify the amendment, information was subsequently received indicating that the legislature had reconsidered this action and voted to ratify the proposed amendment.

In all cases in which the legislatures appear to have acted favorably upon the proposed amendment, either the Governor or some other state official has transmitted to the Department a certified copy of the resolution passed by the particular legislature, except in the case of Minnesota, in which case the secretary of the Governor merely informed the Department that the state legislature had ratified the proposed amendment and that the Governor had approved the ratification.

The following list shows the order in which the amendment was ratified by the legislatures of the various states, the date given being the date upon which the resolution was passed by the legislature, or if this information does not appear on the certified copy of the resolution on file in the Department, the date indicated is that upon which the resolution of the state legislature was approved by the Governor:

Alabama	August 17, 1909.	"Approved". Doesn't appear whether Governor signed.
Kentucky	February 8 or 9, 1910	Date passed by legislature. Not signed by Governor; Legislature acted on resolution of Congress before it was transmitted to it by Governor.
South Carolina	February 19, 1910.	Date passed by legislature. Signed by Governor.
Illinois	March 1, 1910.	Date passed by legislature. Not signed by Governor.

Mississippi	March 7, 1910.	Date passed by legislature. Signed by Governor.
Oklahoma	March 14, 1910.	Date signed by Governor.
Maryland	April 8, 1910.	"Approved". Not signed by Governor.
Georgia	August 3, 1910.	"Approved". Doesn't appear whether Governor signed.
Texas	August 17, 1910.	Date signed by Governor.
Ohio	January 19, 1911.	"Adopted". Doesn't appear whether signed by Governor, - likely not.
Idaho	January 20, 1911.	Date passed by legislature. Not signed by Governor.
Oregon	January 23, 1911.	Date passed by legislature. Not signed by Governor.
Washington	January 26, 1911.	Date passed by legislature. Not signed by Governor. Governor signed.
California	January 31, 1911.	Date passed by legislature. Doesn't appear
Montana	January 31, 1911.	Date signed by Governor.
Indiana	February 6, 1911.	Date signed by Governor.
Nevada	February 8, 1911.	"Approved". Doesn't appear whether signed by Governor.
North Carolina	February 11,1911.	Date passed by legislature. Not signed by Governor.
Nebraska	February 11,1911.	Date signed by Governor.
Kansas	February 18, 1911.	Date passed by legislature. Signed by Governor.
Colorado	February 20,1911.	Date signed by Governor.
North Dakota	February 21,1911.	Date signed by Governor.
Michigan	February 23,1911.	Date passed by legislature. Not signed by the Governor but it is attested by the Governor.
Iowa	February 27,1911.	Date signed by Governor.
Missouri	March 16, 1911.	Date passed by legislature. Doesn't appear whether signed by Governor.
Maine	March 31, 1911.	Date passed by legislature. Signed by Governor.
Tennessee	April 7, 1911.	Date passed by legislature. Signed by Governor.
Arkansas	April 22, 1911.	Date passed by legislature. Governor vetoed June 1, 1912. March 28, 1911. Governor informed Secretary of State legislature had failed to pass resolution. So first rejected and subsequently ratified.
Wisconsin	May 26, 1911.	Date received by Secretary of State of Wisconsin. Not signed by Governor.
New York	July 12, 1911.	Date passed by legislature. Not signed by Governor.
South Dakota	February 3, 1912.	Date filed by State Secretary of State. Not signed by Governor. No date of adoption given.
Arizona	April 9, 1912.	Not clear whether date passed by legislature or signed by Governor.

Minnesota	June 11, 1912.	Date passed by legislature. Signed by Governor. Secretary of Governor merely informs Department and no resolution of legislature enclosed.
Louisiana	July 1, 1912.	Date passed by legislature. Signed by Governor.
Delaware	February 3, 1913.	Date passed by legislature. Not signed by Governor.
Wyoming	February 3, 1913.	Doesn't appear whether date passed by legislature or signed by Governor. Signed by Governor.
New Jersey	February 5, 1913.	Date signed by Governor.
New Mexico	February 5, 1913.	Date signed by Governor.

Ratification by Arkansas. Power of the Governor to veto.

It will be observed from the above record that the Governor of the State of Arkansas vetoed the resolution passed by the legislature of that State. It is submitted, however, that this does not in any way invalidate the action of the legislature or nullify the effect of the resolution, as it is believed that the approval of the Governor is not necessary and that he has not the power of veto in such cases. (See Solicitor's memorandum on this subject dated April 20, 1911.)

Power of a State to Ratify after having once Rejected the Proposed Amendment

It will also be observed that Arkansas ratified the proposed 16th Amendment after having previously rejected it. It would appear that the Legislature of a State may act adversely any number of times and it still has the right to act favorably and the ratification is as valid as if it had never acted adversely on the question. New Jersey ratified the 13th Amendment after having rejected it. In the case of the 14th Amendment, four States acted similarly (North Carolina, South Carolina, Georgia, Virginia).

In all these cases the states which had taken action ratifying the various amendments before the Secretary's announcement was made were

included by the Secretary of State in the list of states ratifying.

In the case of the 14th Amendment, all the states mentioned above except Virginia, which state ratified the amendment after the Secretary's announcement was made, were included in the declaration of the Secretary of State. (See Solicitor's memorandum on the subject of Kentucky's ratification of the 16th Amendment, dated March 21, 1912.)

Kentucky's Ratification.

It is to be noted that the Kentucky legislature passed a resolution ratifying the proposed 16th Amendment before a copy of the resolution of Congress was transmitted to that body by the Governor and that when the Governor received the certified copy of the Joint Resolution of Congress from the Secretary of State and transmitted it to the legislature, the latter refused to act on it. Inasmuch as there is no statute or other law or Congressional action which might properly be regarded as preventing the legislature's acting upon the Resolution of Congress proposing an amendment to the Constitution until a copy of the Resolution has been sent by the Secretary of State to the Governor and until the latter officer has transmitted the same to the legislature, it is believed that the legislature of Kentucky has validly ratified the proposed 16th Amendment. (See Solicitor's memorandum on the subject of Kentucky's ratification of the 16th Amendment, dated March 21, 1912.)

Errors in Resolutions of State Legislatures in quoting the Proposed 16th Amendment.

In the certified copies of the resolutions passed by the legislatures of the several states ratifying the proposed 16th amendment, it appears that only four of these resolutions (those submitted by Arizona, North Dakota, Tennessee and New Mexico) have quoted absolutely accurately and correctly the 16th amendment as proposed by Congress. The other thirty-three resolutions all contain errors either of punctuation, capitalization, or

wording. His note, it is to be remembered, did not transmit to the Department a copy of the resolution passed by the legislature of that state. The resolutions passed by twenty-two states contain errors only of capitalization or punctuation, or both, while those of eleven states contain errors in the wording. The following is a list of the states indicating the errors made:

Alabama	Error of punctuation.
Kentucky	Errors of punctuation and capitalization.
South Carolina	Error of capitalization.
Illinois	Error of capitalization; "enumeration" instead of "numeration".
Mississippi	"the" omitted before "Congress"; error of punctuation and capitalization; "of" instead of "or" before "enumeration".
Oklahoma	Error of capitalization; "from" used instead of "without regard to" before "any".
Maryland	Error of punctuation.
Georgia	"levy" used instead of "lay"; errors of punctuation; "sources" instead of "source"; "income" instead of "incomes".
Texas	Error of punctuation.
Ohio	Error of capitalization.
Idaho	Error of capitalization; "or" instead of "or" before "enumeration".
Oregon	Error of capitalization.
Washington	Errors of capitalization and punctuation; "income" instead of "incomes".
California	"the" omitted before "Congress"; "any" before "census", and "or" before "enumeration" omitted; errors of punctuation and capitalization.
Montana	Errors of capitalization.
Indiana	Error of capitalization.
Nevada	Errors of punctuation and capitalization.
North Carolina	Errors of punctuation and capitalization.
Nebraska	Error of capitalization.
Kansas	Error of capitalization.
Colorado	Error of punctuation.
North Dakota	No errors.
Michigan	Error of capitalization.
Iowa	Error of capitalization.
Missouri	Error of capitalization; "levy" instead of "lay".
Maine	Errors of punctuation and capitalization.
Tennessee	No errors.

Arkansas	"The" before "Congress" omitted; "the" before "power" inserted; errors of punctuation and capitalization.
Wisconsin	Errors of capitalization.
New York	Errors of punctuation and capitalization.
South Dakota	"The" before "Congress" omitted; errors of punctuation and capitalization.
Arizona	No errors.
Minnesota	Resolution of the State Legislature not filed with the Department.
Louisiana	Error of punctuation.
Delaware	"Article XVI" omitted; errors of punctuation.
Wyoming	Errors of punctuation and capitalization.
New Jersey	Error of capitalization.
New Mexico	No errors.

A careful examination of the resolutions of the various states on file in the Department, ratifying the 15th amendment to the Constitution, shows that there are many errors of punctuation and capitalization and some, although no substantial, errors of wording, in quoting the article proposed by Congress as shown in the following list:

"Article XV.

"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

"Section 2. The Congress shall have power to enforce this article by appropriate legislation."

New Jersey	Capital letters omitted.
Minnesota	Several errors of capitalization and punctuation.
Georgia	The word "or" is written in after the word "race" but marked out with pencil.
Ohio	Errors of punctuation.
Kansas	Errors of capitalization. Section 2. Wording entirely wrong as follows: "The Congress, by appropriate legislation may enforce the provisions of this article." Kansas ratified as above, February 1869, but in January, 1870, appears to have ratified again, copying the amendment correctly.
Rhode Island	The word "rights" is used instead of the word "right", and there are errors of capitalization. These errors appear in one copy filed in the Department, but there is a second copy which is entirely correct.
Mississippi	Errors of punctuation.
Missouri	Errors of capitalization.
Vermont	Errors of capitalization.
Florida	Errors of capitalization and punctuation.
Connecticut	Errors of punctuation, commas omitted.
Indiana	The word "the" is inserted before the word "citizens".
New York	The word "the" is inserted before the word "citizens".
Pennsylvania	Errors of punctuation, commas omitted.
South Carolina	Errors of punctuation, commas omitted.
Wisconsin	Capital letters omitted and the word "the" inserted.
Michigan	Errors of capitalization and punctuation.
Illinois	Errors of punctuation, commas omitted.
Louisiana	The word "by" is omitted before the word "any", in the original, but is inserted in pencil. Errors of capitalization.
West Virginia	Errors of capitalization.
Nevada	Errors of capitalization.
North Carolina	Error of punctuation; comma inserted after the word "state".

In the resolutions of the state legislatures on file in the Depart-

ment, ratifying the 14th amendment to the Constitution, there are many errors of punctuation, capitalization, and wording, some of the errors in wording being substantial errors, as will appear from the following list:

"Article XIV.

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

"Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

"Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

"Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall

assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

"Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Connecticut	Errors of punctuation and capitalization; "and" for "any" after "pay", Section 4.
New Hampshire	Errors of punctuation and capitalization; "the" for "a" after "of" and before "State", Section 2; "of" inserted between "but" and "all", Section 4.
Tennessee	Errors of punctuation and capitalization.
New Jersey	Errors of punctuation and capitalization.
Oregon	Errors of punctuation and capitalization.
Vermont	Errors of punctuation and capitalization; "that" for "the", Section 5.
New York	Errors of punctuation and capitalization; "or" for "and" between "executive" and "judicial", Section 2; "or" for "and" between "President" and "Vice President", Section 3.
Ohio	Errors of punctuation and capitalization; "or" for "and" between "President" and "Vice President", Section 3.
Illinois	Errors of punctuation and capitalization.
West Virginia	Errors of punctuation and capitalization; "for" for "of" between "elector" and "President", Section 3; "rebellion or" inserted between "in" and "insurrection"; "or bounties" omitted after "pensions", Section 4.
Kansas	Errors of punctuation and capitalization.
Maine	Errors of punctuation and capitalization.
Nevada	Errors of punctuation and capitalization; "being" inserted between "and" and "citizens", Section 2; "or" instead of "and" between "obligations" and "claims", Section 4. "The" omitted before "Congress", Section 5.
Missouri	Errors of punctuation and capitalization.
Indiana	Errors of punctuation and capitalization; "or" for "nor" between "States" and "any", Section 4; "claims" for "claim" between "any" and "for", Section 4.
Minnesota	Errors of punctuation and capitalization.
Rhode Island	Errors of punctuation and capitalization; "or" for "and" between "executive" and "judicial", Section 2; "to" for "or" between "assume" and "pay", Section 4.

Wisconsin	Errors of punctuation and capitalization: "numbers" for "number" between "jurisdiction" and "counting", Section 2; "whenever" for "when" between "but" and "the", Section 2; "the choice of" omitted between "for" and "electors", Section 2; "of" for "for" between "electors" and "President", Section 2; "of the United States" omitted between "Vice President" and "Representative", Section 2; "or for United States" inserted before "Representatives", Section 2; "the" omitted before "Executive", Section 2; "or" for "and" between "Executive" and "Judicial", Section 2; "of a state" omitted after "judicial officers", Section 2; "to" for "in" between "reduced" and "the", Section 2. Section 2 is erroneously quoted: "Representatives shall be apportioned among the several states according to their respective number counting the whole number of persons in each state, excluding Indians not taxed. But whenever the right to vote at any election for electors of President and Vice President, or for United States Representatives in Congress, Executive or Judicial Officers or the members of the Legislature thereof, is denied to any of the male inhabitants of such state being twenty one years of age and citizens of the United States or in any way abridged except for participation in rebellion or other crimes the basis of representation therein shall be reduced to the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state." "or" for "and" between "President" and "Vice-President", Section 3; "or as an officer of the United States" omitted between "Congress" and "or", Section 3; "vote of two thirds" changed to "a two thirds vote"; "the" inserted between "for" and "payment"; "the" inserted after "suppressing", Section 4; "that" for "the", Section 5.
Pennsylvania	Errors in punctuation and capitalization; "laws" for "law" where the word first appears in Section 1; "law" for "laws", last word, Section 1; "or" for "nor" between "States" and "any" where the word first appears in Section 4.
Michigan	Errors in punctuation; "or" for "and" between "President" and "Vice President", Section 3.
Massachusetts	Errors in punctuation and capitalization; "the members of" omitted before "the Legislature", Section 2; "therein" omitted between "representation" and "shall", Section 2; "such" for "male" before

	"citizens" where the latter word last appears in Section 2; "or" for "and" between "President" and "Vice President", Section 3.
Nebraska	Errors of punctuation and capitalization; "any" inserted before "electors", Section 2; "or" for "and" between "President" and "Vice President", Section 3.
Iowa	Errors in punctuation and capitalization; "abridge" for "abridged" after "way", Section 2.
Arkansas	Errors in punctuation and capitalization; "or" for "and" between "President" and "Vice President", Section 3; "or under any State" omitted after "United States", Section 3. In a second copy of the resolution, the proposed amendment is copied correctly so far as the wording is concerned, but there are errors of punctuation and capitalization. In Section 2 there is a period after "numbers" and "counting" is commenced with a capital letter.
Florida	Errors in punctuation and capitalization; "First" is substituted for "Article 1"; "Second" for "Article 2"; "Third" for "Article 3"; "Fourth" for "Article 4"; "Fifth" for "Article 5"; "of" omitted before "the State" in first sentence, Section 3; "or" for "and" between "President" and "Vice President", Section 3; "and" for "or" between "aid" and "comfort", Section 3.
North Carolina	Errors in punctuation and capitalization; "the" omitted before "Executive", Section 2; "and" for "or" between "aid" and "comfort", Section 3.
Louisiana	Errors in punctuation and capitalization; "be as" for "bear" after "shall", Section 3.
South Carolina	Errors in punctuation and capitalization; "the members of" omitted before "the Legislature", Section 2; "therein" omitted after "representation", Section 2; "such" for 'male" before "citizens" where the latter word last appears in Section 2; "or" for "and" between "President" and "Vice President", Section 3; "the" inserted before "payment", Section 4.
Alabama	Errors in punctuation and capitalization; "Legislatures" for "Legislature", Section 2.
Georgia	Errors in punctuation and capitalization; "Section 1st" for "Section 1"; "Section 2d" for "Section 2"; Section 3d" for "Section 3"; "Section 4th" for "Section 4"; "Section 5th" for "Section 5"; "the" inserted before "citizens" where the latter word last appears in Section 1, but crossed out by pencil; "rendered" for "reduced", Section 2,

	but crossed through with pencil and "reduced" inserted in pencil; "and" for "or" between "aid" and "comfort", Section 3. In a second copy of the resolution on file in the Department "the" is not inserted before "citizens" as above indicated; there is no error in the word "reduced" in this second copy, Section 2, nor in the word "or" between "aid" and "comfort". In a third copy of the resolution filed in the Department, the sections are correctly indicated.
Virginia	Errors in punctuation and capitalization; "and" for "or" between "aid" and "comfort", Section 3; "and" for "or" between "insurrection" and "rebellion", Section 4; "or" for "and" between "obligations" and "claims", Section 4.
Mississippi	Errors in punctuation and capitalization; "way" omitted before "abridged" but inserted in blue pencil, Section 2; "crimes" for "crime", Section 2; "for" instead of "of" after "elector", Section 3, but inserted in blue pencil; "to" instead of "shall" before "have engaged", Section 3, but inserted in blue pencil; "held" omitted before "illegal", Section 4, but inserted in blue pencil.
Texas	Errors in punctuation and capitalization; "or under any State" omitted, Section 3.

At the time the 14th Amendment was adopted, there were thirty-seven states in the Union, therefore twenty-eight were necessary to make up the required three-fourths necessary to ratify an amendment to the Constitution. The first thirty states above mentioned were all included in the declaration of the Secretary of State announcing the adoption of the 14th amendment. The three latter states were not included in that declaration.

It will be observed that there were many substantial errors of wording in the resolutions of the state legislatures upon which the Secretary of State acted in issuing his declaration announcing the adoption and the ratification by the states of the 14th amendment to the Constitution. As, by announcing the ratification of the 14th amendment the Executive Branch of the Government ruled that these errors were immaterial to the adoption of the amendment, and further as this amendment has been repeatedly before the

courts, and has been by them enforced, it is clear that the procedure in ratifying that amendment constitutes on this point a precedent which may be properly followed in proclaiming the adoption of the present amendment,- that is to say, that the Secretary of State may disregard the errors contained in the certified copies of the resolutions of legislatures acting affirmatively on the proposed amendment.

It should, moreover, be observed that it seems clearly to have been the intention of the legislature in each and every case to accept and ratify the 16th amendment as proposed by Congress. Again, the incorporation of the terms of the proposed amendment in the ratifying resolution seems in every case merely to have been by way of recitation. In no case has any legislature signified in any way its deliberate intention to change the wording of the proposed amendment. The errors appear in most cases to have been merely typographical and incident to an attempt to make an accurate quotation.

Furthermore, under the provisions of the Constitution a legislature is not authorized to alter in any way the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. It, therefore, seems a necessary presumption, in the absence of an express stipulation to the contrary, that a legislature did not intend to do something that it had not the power to do, but rather that it intended to do something that it had the power to do, namely, where its action has been affirmative, to ratify the amendment proposed by Congress. Moreover, it could not be presumed that by a mere change of wording probably inadvertent, the legislature had intended to reject the

amendment as proposed by Congress where all parts of the resolution other than those merely reciting the proposed amendment had set forth an affirmative action by the legislature. For these reasons it is believed that the Secretary of State should in the present instance include in his declaration announcing the adoption of the 16th amendment to the Constitution the States referred to notwithstanding it appears that errors exist in the certified copies of Resolutions passed by the Legislatures of those States ratifying such amendment.

The Department has not received a copy of the Resolution passed by the State of Minnesota, but the Secretary of the Governor of that State has officially notified the Depattment that the Legislature of the State has ratified the proposed 16th amendment. It is believed that this meets fully the requirement with reference to the receipt of "official notice" contained in Section 205 Revised Statutes, and that Minnesota should be numbered with the States ratifying the aforesaid amendment.

It is recommended, therefore, that the Secretary issue his declaration announcing the adoption of the 16th amendment to the Constitution.

PDR/JBB/JHP.

O.K. P.D.R.

Opening Argument

The narratives which follow were written to provide the basis for testimony in court. That's why the writing style is somewhat dry and technical, and that is also why each narrative, whenever applicable, repeats a major principle involved in the charge of fraud brought in this book, the principle of concurrence, which requires any State Legislature that would presume to cast its vote in favor of the ratification of any amendment to our Constitution must do so only in complete agreement with, and to, the exact form of the amendment as presented to them in the certified copy of the Congressional Joint Resolution including every punctuation mark. This principle is mentioned in the foregoing memorandum of February 15th, 1913 written by the Solicitor of the United States Department of State to Philander Knox, the Secretary of State.

The office of the Solicitor of the Department of State was, and is, the office of the general counsel for that department of the federal administration. One of its primary functions is to provide legal advice for the benefit of the Secretary of State. Secretary Knox, himself a lawyer and former U. S. Senator, received such legal advice, in several memorandums, from his Solicitor concerning the status of the ratification of the proposed Sixteenth Amendment.

The argument employed by the Solicitor to justify the discrepancies in the copies of the resolutions purportedly ratifying the proposed Sixteenth Amendment, which were transmitted by the States to Washington, is undergirded by the assertion that since the Fourteenth Amendment had "been repeatedly before the courts," and that, since, on those occasions, the courts had enforced the provisions of that amendment, the courts had, therefore, acceded to the "errors" made in the ratification of that amendment. There is an obvious problem of logic in this line of reasoning. To have a statute or a Constitutional provision before a court is not the same thing as having the method, by which a statute or a constitutional provision came into being, before a court. Furthermore, the Solicitor, nor any of his successors, ever brought any of this nonsense before a court. The Solicitor thereby turned the acceptance of the "errors" committed in the purported ratification of the Fourteenth Amendment into "a precedent which [might] be properly followed in proclaiming the adoption" of the proposed Sixteenth Amendment. Any change in amendments proposed to the States was to now be considered an "error" and all "errors" were acceptable. This is a hard one to swallow all by itself, but, in addition, nowhere, in this memorandum, does the Solicitor even suggest that the Secretary of State ought, with all due diligence, to check and make sure that the duly noted discrepancies were by mistake, and not intent. Instead, the Solicitor presumes that it was the intent of each and every Legislature, flawed ratification resolution or not, to have passed upon the exact wording and that changes in wording were "probably

inadvertent." The Solicitor rationalized this cavalier attitude by stating that the various Legislatures did not intend to reject the amendment by these changes. This is an incredible statement in light of his unequivocal pronouncement immediately preceding that "a legislature is not authorized to alter in any way the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment." In other words, the Solicitor advised the Secretary of State that, while intentional alterations were not acceptable, alterations by way of "error" were.

How did the Solicitor know that the changes made to the proposed amendment were "errors" as opposed to intentional changes? According to the Solicitor, it was a "necessary presumption" that the Legislatures did not do something that they weren't allowed to do. Apparently, this presumptive attitude lead both the Solicitor and the Secretary to ignore the evidence of not only the intent to change the wording, but of gross misconduct and fraud. This was a natural outgrowth of the seemingly official policy which undertook to label all of the evident problems in the copies of State action received in Washington as "errors" and to accept them as such without any further investigation.

In the case of the purported ratification in the State of Kentucky, Philander Knox did request those parts of the Kentucky journals which showed the events relating to the purported ratification. If Secretary Knox had an inkling that there might be something amiss in the State of Bluegrass, after he had received a copy of a paraphrased extract of the journals and of the journals themselves, Mr. Knox could have had no doubt. The paraphrased extract showed a vote in the Senate of 27 in favor and 2 against. The official journal showed a vote of 9 in favor and 22 against. Having been presented with an undeniably damaging situation in only the second State to ratify, Knox decided to ignore the entire matter. This was probably due to the opinion rendered in this matter by the Solicitor on March 21st, 1912.

After the Solicitor had an opportunity to inspect the extracts (it is not evident whether Knox showed him the official journals), he delivered an opinion in which he made a great show of the authenticity and acceptability of the extracts. Based strictly upon the extracts, of course, the Senate of the State of Kentucky seemed to have voted in favor of the ratification resolution. The official journal showed otherwise. Neither Philander Knox nor his Solicitor further communicated with anyone from the State of Kentucky for the duration of the ratification process.

An enormous hole in the Solicitor's logic about presumptions of errors as opposed to deliberate changes in the wording, capitalization and punctuation of the proposed amendment cannot be covered up as easily as he might have liked. That hole was created by all those certified copies of Senate Joint Resolution No. 40 which were sent out to the Governors of each State, sometimes more than once. Those certified copies and the acknowledgements of their receipt by the Governors had one function—namely, to ensure that Knox knew that each State had possession of the exact text of the proposed amendment and that each Governor knew that he had the exact text of the proposed amendment. Why? To eliminate any possibility that anyone could claim that the States didn't have the exact text of the proposed amendment. The Governor of a State was the logical, official receiver of these certified copies because—

1. he was the chief executive of his State and, thus, finally, responsible for his State's handling of such matters

2. his Secretary of State would be involved in the final certification process

3. sending a certified copy to each of the legislators would have made for a very messy acknowledgment procedure

The Governor of Kentucky contended that a Legislature would not have proper jurisdiction of the amendment if the Governor did not transmit the certified copy to his Legislature. This transmission was an important link in the chain of evidence that the exact text of the proposed amendment contained in the certified copy of the Congressional Joint Resolution was properly passed on to the next holder in due course of that highly important legislative material. For a Legislature, the subject matter of an amendment to the Constitution of the United States is somewhat akin to the subject matter in a special session of the Legislature—the only jurisdiction of subject matter over which the Legislature may exercise legislative control is the subject matter presented to the Legislature by the Governor for that special session.

Knox did send certified copies to each Governor. Knox did receive acknowledgments from almost every Governor. Upon receipt of an acknowledgment, Knox then knew absolutely that that State's Governor possessed a certified copy of the resolution from Washington, D. C. Most Governors also acknowledged that they would transmit the certified copy to their Legislatures. Here the presumption could reasonably be held that those Governors would do their ministerial duty and transmit those certified copies to their Legislatures. Knox and his Solicitor could then **not** presume that discrepancies in the text of the legislative actions returned were errors. They were bound to presume that those discrepancies were in fact deliberate changes, because each and every one of the Legislatures had the exact text, which the Solicitor states could not be changed "in any way," before them for consideration. Checking through any particular Legislature's ratification action, letter for letter, comma for comma, did not take more than one-half hour in any case, yet the Solicitor is more than forgiving to the States for their "typographical" "errors" which were "incident to an attempt to make an accurate quotation." If these changes by the various States were attempts to make accurate quotations, one has to wonder what they would do if they weren't so diligently trying to be accurate?

An enrolled bill is "a final copy of a bill or joint resolution which has passed both houses of a legislature and is ready for signature." Black's Law Dictionary, 5th Ed. It is presumed that the text in an enrolled bill is what the legislators intended to enact. Philander Knox and his Solicitor knew this rule of legislation very well. And with a running leap, they flew in the face of this presumption of legislative intent in an obvious, brazen and successful attempt to jam this amendment down the throats of the American people.

Finally, on the topic of "errors," the Solicitor completely ignored the subject of the preamble of Senate Joint Resolution No. 40. He did ignore the "errors" made on the preamble of the Seventeenth Amendment (memorandum of May 10th, 1912). As the preamble to the Constitution of the United States itself explains the intent of the framers so does the preamble to the resolution proposing an amendment to that Constitution. It is impossible to give assent to the wording without also having given assent to the intent. And as the various original thirteen States had to agree to the preamble, the statement of intent, as well as to the body of the Constitution, so do all States in any subsequent modification of that Constitution have to agree to the statement of intent of

any proposed amendment.

Another problem highlighted by the State of Kentucky which the Solicitor tried to address, in a memorandum dated April 20th, 1911, was that of the signature of the Governor, or rather, the lack of it. The official journals of Kentucky showed that the Governor vetoed the only version of the Kentucky Legislature's ratification resolution which passed both houses. He had two reasons for the veto—one, the resolution which the Senate had passed was not the same as the one which the House had passed, and, two, the Legislature did not have jurisdiction of the matter until after the Governor had transmitted the certified copy of the Congressional Joint Resolution to that body. In the passage of the resolution which the Solicitor claims was valid, the official journal shows that the Senate rejected the resolution. This is why the Governor's signature was not required in that situation. Had the resolution validly passed both houses, the Governor may very well have signed it, but, it did not pass both houses—an excellent reason for him not to have signed it.

The Solicitor made the statement that the situation existing at the time of the framing of the Constitution "would seem to indicate that the framers did not contemplate that the Governors should participate with the Legislatures in the approval of Amendments to the Constitution." He then cites with approval a statement of a previous Governor of Massachusetts to the effect that a Governor's signature is unnecessary to the action of the Legislature in the ratification of an amendment to the Constitution of the United States. (at 3) He also cites Mason, *The Veto Power,* in trying to explain veto power—

> A resolution to amend the Constitution must already have received a two-thirds vote of each branch of the Legislature. Such a resolution is therefore beyond the reach of the veto and consequently beyond the necessity for the Presidential approval. (at 7)

In other words, because any Congressional resolution vetoed by the President requires a two-thirds vote to overcome that veto, the requirement of a two-thirds vote in the case of a Congressional resolution to amend the United States Constitution is considered evidence that a Presidential veto would be of no effect and, in that regard, and that regard only, relieves the President of any duty relative to such a resolution. But, the Solicitor denied that the same situation existed in the States—

> . . . the same reasoning does not apply in the case of the Governor of a State because the United States Constitution does not require that the resolution of the State Legislature approving the amendment to the Constitution must receive the required number of votes to pass a bill over the Governor's veto. (at 7)

The Solicitor, still arguing against the necessity for a State Governor's approval of a ratification resolution, then goes on to say—

> . . . the Constitution of the United States does not require two-thirds vote of the Legislature to a resolution amending the Constitution. If there is any conflict between the State and the United States Constitutions the former must yield. (at 9)

There is no provision in any State Constitution relative to the vote on a State resolution in ratification of an amendment to the Constitution of the United States. Under the Solicitor's reasoning, however, the provision in the United States Constitution providing for a two-thirds vote in the Congress in passage of a resolution to amend

the United States Constitution would then also apply to the States, so that, in the passage of a State resolution on ratification, the Governor's veto would, in like manner to the veto of the President, be made of none effect. The State Legislatures must, indeed, **yield** to the United States Constitution in this matter of a two-thirds vote.

The Solicitor then goes on to say—

> . . . the argument might be advanced that the State Constitution requires the approval of the Governor of the laws of the State only and that neither the resolution passed by the Legislature approving the amendment to the Constitution of the United States nor the amendment itself can be said to be a State law, and, therefore, the requirement of the Governor's signature is not necessary.

Unfortunately, for the Solicitor's contention, in most of the States which claimed ratification of the Sixteenth Amendment, the resolutions or bills which were passed, supposedly signifying the act of ratification, made their official appearances in the published session laws journals of each of those States. They were intended to be State laws and the proof is in these official State publications.

Additionally, the great majority of the legislative acts in supposed ratification of the proposed Sixteenth Amendment were joint resolutions of the State Legislatures. A few were concurrent resolutions, some were considered joint and concurrent resolutions and some were bills. The terms bills and joint resolutions are interchangeable. Even the Solicitor uses the terms interchangeably in his memorandum of April 20th, 1911 (at 8, 12, 13; see also *How Our Laws Are Made,* at 7). Under virtually every State Constitution, legislation which is to become law must be presented to the Governor for approval. Concurrent resolutions, generally, are not accorded that treatment, but, if such resolutions are treated as bills then the proper procedures apply. Thus, in that the great majority of the State Legislatures chose to attempt to ratify the proposed Sixteenth Amendment via the vehicle of either the joint resolution or the bill and to pass those resolutions into law, those legislators evidenced an intention that their Governor have veto power over their acts. Again, the proof of this is in the publishing of these acts in the session laws of the State. They intended to pass a State law, they advanced legislation which must be passed like a State law and they published that legislation as a State law. The Governor's signature did have significance. If he signed, he approved. If he did not sign, then the following three scenarios are possible—

1. he vetoed the bill or joint resolution
2. he did not sign the bill or joint resolution and let it pass through a lapse of time as provided in all State Constitutions
3. he was not presented the bill or joint resolution in violation of the State Constitution

The signature of the Governor, thus, has important implications. He is, after all, the chief executive of his State and is finally liable for all the legislative errors made in his State. As the buck stops at the President's desk at the national level, so does the buck stop at the Governor's desk at the State level. It is his Secretary of State who is charged with the responsibility of the sanctity of the original documents of legislation, and, who ordinarily should make a final check of the ratification resolution with the certified copy of the Congressional Joint Resolution in hand.

The Solicitor makes clear, however, that his argument against the necessity of a Governor's signature on the ratification action is a facade. From his memorandum of

April 20th, he states relative to the failure of the Governor of the State of Washington to sign that State's ratification action and to the possibility that the Legislature failed to present the resolution to the Governor—

> If it can be said that the resolution has never been presented to the Governor but the certified copy only, the resolution itself being on file in the office of the Secretary of State, it would still be useless to request at this date the Governor's signature because the Legislature commenced its session January 9th, and as it could not remain in session more than 60 days must have adjourned not later than March 9th, (Washington Constitution 1889, Article II, Section 12: Annotated Statutes of Washington, Section 6921). Therefore more than ten days having expired since the adjournment of the Legislature the Governor's signature at this time could give the resolution no added validity.
>
> The above discussion assumes of course that the Governor has not attempted to veto the resolution, and it does not appear that he has. If he has then of course it would be useless to ask him for his signature.
>
> In conclusion it should be observed that the constitutions of all the states which give the Governor the veto power also provide a means by which an act of the Legislature shall become a law if the Governor fails to exercise his veto power. By this provision the many resolutions of state legislatures approving amendments to the constitution which were not signed by the Governor would perhaps be considered valid the same as in the case explained above.

In other words, the Solicitor admits to the possibility that a Governor's signature was required but that, what the heck, the Washington Legislature was adjourned and it wouldn't be of any use to try to obtain that signature anyway. If the Governor had attempted to veto the resolution, well, same story. The Solicitor concludes his comments on why no one should bother to check whether the Washington resolution was ever presented to the Governor for his signature with a reference to all the State Constitutions which provide for passage of legislation if the Governor merely fails to veto. This universal provision, according to the Solicitor, makes it all right if the Legislature failed to present the resolution to the Governor. Note that the Solicitor must have had a copy of the Constitution of the State of Washington handy. He must have also been able to read that Article III, Section 12 of that Constitution required the Legislature to present the ratification resolution to the Governor. Nevertheless, the Solicitor, in a bald-faced deceit, counseled a knowing disregard for the truth and a disdain for seeking any further when serious doubts as to the propriety of ratification action at the State level surfaced. If the Washington Constitution required a presentaton of the legislation to the Governor and it was not, it would go without saying that his signature would, after such a violation, give "no added validity" to the resolution. The resolution would be a nullity.

The signatures of the Governors highlight another problem having to do with signatures, or the lack of them. The Governor of the State of Wyoming sent a telegram to Philander Knox claiming that the Wyoming Legislature had ratified the "income tax amendment." Whereupon, the Secretary of State immediately sent a telegram back to the Governor requiring that he furnish a certified copy of the action. The copy of the resolution furnished was a fraudulent document signed only by the Secretary of State of the State of Wyoming. (see narrative for the details) There is no archival original document showing the signatures on that resolution and since the copy sent to

Washington, D. C. is false on its face, there is no reason to suppose that one ever existed. Had the copy sent to Washington been completely certified by the presiding officers of the Wyoming Legislature and by the Governor, there would have been no question. It certainly would have been no inconvenience to sign two sets of documents instead of one. We are, after all, talking about a momentous occasion, the modification of the Supreme Law of the land. A similar situation occurred in California.

In this case, as in every case, the Solicitor chose the lower standard in this most solemn and meaningful of legislation that can be passed. All manner of unsigned documents were accepted. New Mexico is a notable exception in which the copy of the Legislature's action sent to Washington, D. C. is completely certified on the face of the document. For the so-called certification of two States, the original is not referenced and, therefore, under the rule of best evidence, such a copy is not admissible as evidence. Furthermore, in contrast to the States of Wyoming and California, wherein each Knox insisted that a certified copy of the ratification action was required, Minnesota was allowed to slide by without submitting a certified copy of their Legislature's action.

The preceding tale of woe, detailed in the succeeding pages, highlights the necessity that the highest standards, not the lowest, be used in the ratification of a proposed amendment to the Supreme Law of the land.

The Evidence: Narratives of the States

Key to Abbreviations

HJ—House Journal
SJ—Senate Journal
AJ—Assembly Journal
LR—Legislative Record
H. J. R.—House Joint Resolution
S. J. R.—Senate Joint Resolution
A. J. R.—Assembly Joint Resolution
H. C. R.—House Concurrent Resolution
S. C. R.—Senate Concurrent Resolution
H. R.—House Resolution or House Roll
S. R.—Senate Resolution or Senate Roll
H. F.—House File
S. F.—Senate File

Alabama—August 7th, 1909

On July 30th, 1909, B. B. Comer, the Governor of Alabama, wrote a letter to Philander Knox, Secretary of State of the United States, acknowledging receipt of the certified copy of the Congressional Joint Resolution proposing the Sixteenth Amendment, in which he stated—

> . . . I have referred same to our Legislature for their consideration, as they are now in session.

On July 27th, the following resolution was introduced in the Alabama House, and referred to the standing committee on Judiciary.

> H. J. R. 7, Joint resolution, of the Legislature of the State of Alabama, ratifying the 16th amendment of the Constitution of the United States.
>
> Whereas, the Congress of the United States on July __, 1909, adopted a joint resolution, proposing an amendment to the Constitution of the United States, as follows:
>
> "Resolved, by the Senate and House of Representatives of the U. S. A., in congress, assembled, two-thirds of each House concurring therein, that, the following article is proposed as an amendment to the constitution of the United States, which, when ratified, by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes, as a part of the constitution:"—
>
> "Article XVI. The congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census, or enumeration." And the foregoing proposed amendment having been laid before the Legislature of the State of Alabama, for consideration and action; now, therefore; be it resolved, by the Legislature of the State of Alabama, That the foregoing amendment to the constitution of the United States be, and the same is hereby ratified to all intents and purposes, as a part of the Constitution of the United States.
>
> 2. That the Governor of this State is hereby requested to forward to the president of the United States an authentic copy of the foregoing joint resolution. (HJ at 19)

Though the Governor had transmitted his certified copy of the Congressional Joint Resolution to the Alabama legislators, H. J. R. 7 showed an incomplete date of the passage of that resolution, a date that was incorrect even insofar as the partial information shown. More importantly, the Congressional Joint Resolution itself was changed—

1. the preamble was modified—

a. a comma was inserted behind the word "Resolved"

b. the phrase "United States of America" was changed to "U. S. A."

c. a comma was inserted following "U. S. A."

d. the word "Congress" was changed to a common noun

e. the opening paren was changed to a comma
f. the closing paren was deleted
g. the word "That" was changed to "that"
h. a comma was inserted following the word "that"
i. the first instance of the word "Constitution" was changed to a common noun
j. a hyphen was inserted after the colon
2. the comma following the word "incomes" was deleted
3. a comma was added after the word "census"
4. the word "Congress" was changed to a common noun

On July 30th, H. J. R. 7 was reported out of committee—

Mr. John, chairman of the standing committee on Judiciary, reported that said committee in session had acted on the following resolution and ordered same returned to the House with a favorable report:

H. J. R. 7. Ratifying the 16th amendment of the Constitution of the United States. (HJ at 114)

No further action was taken on H. J. R. 7 at this point.

On August 2nd, the House having at some point, which was not recorded on the journal, made the consideration of H. J. R. 7 a special order, H. J. R. 7 was taken up as follows—

JOINT RESOLUTION.

Of the Legislature of the State of Alabama, ratifying the 16th amendment of the Constitution of the United States.

Whereas, the congress of the United States on July —, 1909, adopted a joint resolution, proposing an amendment to the constitution of the United States, as follows:

"Resolved, by the Senate and House of Representatives of the U. S. A., in congress, assembled, two-thirds of each proposed as an amendment to the constitution of the United States, which, when ratified, by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes, as a part of the constitution":

"Article XVI. The congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census, or enumeration."

And the foregoing proposed amendment having been laid before the Legislature of the State of Alabama, for consideration and action; now, therefore, be it resolved, by the Legislature of the State of Alabama, That the foregoing amendment to the constitution of the United States be, and the same is hereby ratified to all intents and purposes, as a part of the Constitution of the United States.

2. That the Governor of this State is hereby requested to forward to the president of the United States an authentic copy of the foregoing joint resolution.

And the resolution was read a third time at length and passed.

Yeas, 81; nays, 0.

Yeas . . . —81

On motion of Mr. John, the H. J. R. 7, was ordered sent forthwith to the Senate without engrossment. (HJ at 156)

In other words, H. J. R. 7 was sent to the Senate without having been put into a final draft.

On the 27th of July, the Senate also entertained a resolution in consideration of the proposed Sixteenth Amendment—

Mr. Reese introduced the following Senate joint resolution, which was read one time and referred to the committee on constitution and constitutional revision and amendment, a standing committee of the Senate, towit (sic):

SENATE JOINT RESOLUTION NO. 1

Ratifying an amendment to the constitution of the United States proposed as article XVI in a joint resolution adopted at the first session of the sixty-first Congress of the United States of America.

Whereas, the Senate and the House of Representatives of the United States of America in Congress assembled at the first session of the sixty-first Congress adopted the following joint resolution, towit (sic): "Joint resolution proposing an amendment to the constitution of the United States.

"Resolved, by the Senate and House of Representatives of the U. S. A., in congress, assembled, two-thirds of each proposed as an amendment to the constitution of the United States, which, when ratified, by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes, as a part of the constitution":

"Article XVI. The congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census, or enumeration."

Therefore, be it resolved by the Legislature of the State of Alabama (the Senate and House of Representatives concurring therein) that the amendment to the constitution of the United States proposed at the first session of the sixty-first Congress of the United States of America by a resolution of the Senate and the House of Representatives of the United States of America in Congress assembled to the several State Legislatures, be and the same is hereby ratified by the Legislature of the State of Alabama and made a part of the constitution of the United States of America, which said amendsent (sic) is in the following language:

"Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." (SJ at 47)

This Senate joint resolution contained both an incorrect and a correct version of the proposed Sixteenth Amendment amidst phrasing which also repeated parts of the preamble to the original Congressional Joint Resolution more than once.

On August 2nd, 1909, the Senate received the following message from the House, allowing the Senate to disregard the above Senate joint resolution—

The House has adopted the following H. J. R. and ordered the same sent forthwith to the Senate without engrossment:

JOINT RESOLUTION.

Of the Legislature of the State of Alabama, ratifying the 16th amendment of the Constitution of the United States. Whereas, the congress of the United States on July __, 1909, adopted a joint resolution, proposing an amendment to the constitution of the United States, as follows:

Resolved, by the Senate and House of Representatives of of the U. S. A., in congress, assembled (two-thirds of each House concurring therein), That, the following article is proposed as an amendment to the constitution of the United States, which, when ratified, by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes, as a part of the constitution:

"Article XVI. The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

And the foregoing proposed amendment having been laid before the Legislature of the State of Alabama, for consideration and action; now, therefore, be it resolved

by the Legislature of the State of Alabama, That the foregoing amendment to the constitution of the United States be, and the same is hereby ratified to all intents and purposes, as a part of the Constitution of the United States.

2. That the Governor of this State is hereby requested to forward to the president of the United States an authentic copy of the foregoing joint resolution.

And sends the same herewith to the Senate.

CYRUS B. BROWN, Clerk.

HOUSE MESSAGE.

On motion of Mr. Merritt the House joint resolution set out in full in the foregoing message from the House, was read one time and referred to committee on Constitution and Constitutional Revision and Amendment, a standing committee of the Senate. (SJ at 91)

Two days later, H. J .R. 7 was reported out of committee favorably and read the second time.

H. J. R. 7. Ratifying the sixteenth amendment of the constitution of the United States. (SJ at 127)

On August 10th, H. J. R. 7 was taken up for a vote in the Senate with the following result—

The,

H. J. R. 7. Ratifying the sixteenth amendment of the constitution of the United States.

Was read a third time at length, concurred in and passed.

Yeas, 23; nays, 0.

Yeas . . . —23 (SJ at 220)

On that same day, following the Senate vote, the House was sent a communication informing that body of the Senate vote. (HJ at 393) H. J. R. 7 was then found correctly enrolled, i. e., the wording of the resolution was as desired. (HJ at 410) H. J. R. 7 was then duly signed by the Speaker—

The Speaker of the House in the presence of the House, immediately after the title had been publicly read by the clerk, the reading at length having been dispensed with by a two-thirds vote of a quorum present, signed the H. J. R. 7, the title to which is set out in the above and foregoing report from the standing committee on Enrolled Bills. (HJ at 410)

H. J. R. 7 was then returned to the Senate for signing

The President pro tem of the Senate, in the presence of the Senate, immediately after the title had been publicly read by the Secretary, signed the above House joint resolution, the title of which is set out in the foregoing message from the House.

The reading at length of said joint resolution having been dispensed with, by a two-thirds vote of a quorum of the Senate present. (SJ at 240)

There is no indication in the journals that H. J. R. 7 was ever presented to the Governor as required in Article V, Section 125 of the Alabama State Constitution—

Every bill which shall have passed both houses of the legislature, except as otherwise provided in this Constitution, shall be presented to the governor . . . Every vote, order, or resolution to which concurrence of both houses may be necessary . . . shall be presented to the governor; and, before the same shall take effect, be both houses according to the rules and limitations prescribed in the case of a bill.

However, in the transmittal letter to Philander Knox, sent almost two years after the foregoing had transpired in the Alabama Legislature, the secretary to the Governor states that an enclosed copy of H. J. R. 7 was "passed by the Legislature of Alabama and approved Aug. 17, 1909." The certification from the Secretary of State of Alabama, dated June 9th, 1911, states that "I, CYRUS B. BROWN, Secretary of State, do hereby certify that the pages hereto attached contain a true, accurate and literal copy of House Joint Resolution No. 7, by the Legislature of the State of Alabama, Approved August 17, 1909 . . ." If that is true then H. J. R. 7 does not meet the criteria for ratification—the attached pages do not have even a printed indication of signature by anyone at the bottom of the document.

No. 8 H. J. R. 7.

HOUSE JOINT RESOLUTION.

Of the Legislature of the State of Alabama, ratifying the 16th amendment of the Constitution of the United States.

WHEREAS, the Congress of the United States on July —, 1909, adopted a Joint Resolution, proposing an amendment to the Constitution of the United States, as follows:

"Resolved, by the Senate and House of Representatives of the U. S. A., in Congress assembled, two-thirds of each House concurring therein, that, the following article is proposed as an amendment to the Constitution of the United States, which, when ratified, by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes, as a part of the Constitution:"—

Article XVI. The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census, or enumeration." And the foregoing proposed (sic) amendment having been laid before the Legislature of the State of Alabama, for consideration and action;

NOW, THEREFORE, be it resolved, by the Legislature of the State of Alabama, That the foregoing amendment to the Constitution of the United States be, and the same is hereby ratified to all intents and purposes, as a part of the Constitution of the United States.

2. That the Governor of this State, is hereby requested to forward to the President of the United States an authentic copy of the foregoing Joint Resolution.

Approved, August 17, 1909.

H. J. R. 7 of the legislature of the State of Alabama, contains several violations of the requirement to concur in the original Congressional Joint Resolution of which the Alabama legislators had a certified copy. According to the Solicitor of the Department of State (memorandum of February 15th, 1913 at 15), responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter in any way the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is confirmed by the statements made by Edward F. Willett, Jr. Esq., Law Revision Counsel, United States House of Representatives, in DOCUMENT NO. 97-120 of the 97th CONGRESS, 1st Session, entitled *How Our Laws Are Made*, speaking of the preciseness with which any bill passed by the two houses of Congress must totally agree—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, with **the *spelling and punctuation* exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate received a copy of the bill in **the *precise* form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical* form by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment exactly as agreed to, and **all *punctuation* must be in accord with the action taken.** (at 45) (emphasis added)

If, in every ordinary piece of legislation, the requirements of exactness are so stringent even down to the smallest comma, obviously, the State Legislatures in passing upon the modification of the Supreme Law of the land must be held to no less a standard.

The Legislature of Alabama did far less than that standard. The purported ratification of the proposed Sixteenth Amendment by the State of Alabama was defective because of the following the deficiencies—

1. Failure to concur in Congressional Joint Resolution No. 40 as passed by Congress in that H. J. R. 7 contained the following changes to the official resolution—

a. the preamble was modified

i. a comma was inserted behind the word "Resolved"

ii. the phrase "United States of America" was changed to "U. S. A."

iii. a comma was inserted following "U. S. A."

iv. the word "Congress" was changed to a common noun

v. the opening paren was changed to a comma

vi. the closing paren was deleted

vii. the word "That" was changed to "that"

viii. a comma was inserted following the word "that"

ix. the first instance of the word "Constitution" was changed to a common noun

x. a hyphen was inserted after the colon

b. the comma following the word "incomes" was deleted

c. a comma was added after the word "census"

d. the word "Congress" was changed to a common noun

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878.

Kentucky—February 8th, 1910

On January 13th, 1910, a resolution was introduced in the Kentucky House of Representatives by Congressman O. Houston Brooks, of the Committee on Federal and State Constitutional Amendments, entitled, "H. Res. 4. Resolution ratifying the Sixteenth Amendment to the Constitution of the United States." H. Res. 4 read as follows—

> Whereas, the Congress of the United States on July __, 19__, adopted a joint resolution, proposing an amendment to the Constitution of the United States, as follows:
>
> "Resolved, by the Senate and House of Representatives of the U. S. A., in Congress assembled, two-thirds of each House concurring therein, that, the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several States, shall be valid to all intents and purposes, as a part of the Constitution."
>
> Article XVI. The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census, or enumeration. And the foregoing proposed amendment having been laid before the Legislature of the State of Kentucky for consideration and action.
>
> Now therefore, be it resolved by the General Assembly of the Commonwealth of Kentucky, that the foregoing amendment to the Constitution of the United States be, and the same is hereby ratified to all intents and purposes, as a part of the Constitution of the United States.
>
> 2. That the Governor of this State is hereby requested to forward to the President of the United States an authentic copy of the foregoing joint resolution.

H. Res. 4 was reported out of committee by Mr. Brooks on the 26th of January and came up for a vote that same day. (HJ at 227) The House journal shows that it passed the House on a roll call of 69 in the affirmative and 7 in the negative. A message was then sent to the Kentucky Senate announcing that the House had adopted H. Res. 4. (SJ at 314) According to the Senate journal, the "rules were suspended and the Senate took up [the] resolution for consideration." Having considered H. Res. 4, the Senate concurred and, on January 31st, the House received a message from the Senate announcing their concurrence. (HJ at 287)

The joint resolution was then sent on to the Governor, Augustus E. Willson, so that he might forward an authentic copy of that resolution to the President.

From the preceding entries in the journals it might have appeared that the Legislature of the State of Kentucky had ratified the proposed Sixteenth Amendment. Upon closer inspection, however, it can be seen that they did not.

In an extract of the Kentucky House journal sent to Philander Knox, the Secretary of

State of the United States, along with the official journals of both the Senate and the House (see letter of Assistant Secretary of State dated December 13th, 1911), it is recorded that after H. Res. 4 had been sent through the legislative process an error was discovered.

> It being **suggested and appearing** that in engrossing said resolution the words "on incomes" had been omitted, the said resolution was correctly engrossed and was on the 8th day of February, 1910, certified, reported and delivered to the Senate in form, words and figures as adopted by the House of Representatives on the 26th day of January 1910, as set out on pages one and two of this certificate and as appears from the Journal and records on file in the office of the Clerk of the House of Representatives." (emphasis added) (extracts)

The wording of the proposed amendment as it was introduced in the House read as follows—

> Article XVI. The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census, or enumeration. (HJ at 227)

In this version, the comma following the word "incomes" was deleted and a comma was inserted following the word "census." The version received by the Senate from the House and on which voted their concurrence on January 27th read as follows—

> ARTICLE XVI. The Congress shall have power to lay and collect taxes from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration. (SJ at 314)

In this version, the phrase "on incomes" and the comma inserted after the word "census" were deleted in engrossing H. Res. 4 in the version that the Senate received.

There were only 30 words in the official Congressional Joint Resolution, yet, on February 2nd, Mr. Fulton of the House Committee on Enrollments found H. Res. 4 correctly enrolled with 30 words (HJ at 324) while Mr. Tichenor of the Senate Committee on Enrollments found H. Res. 4 correctly enrolled with only 28 words. (SJ at 435) In a comparison of both versions of H. Res. 4 as recorded in the respective journals, eleven discrepancies are to be found. Nevertheless, the presiding officers of both houses went through the signing ceremonies on February 2nd—

> Thereupon all other business was suspended, the said resolution was read at length and compared in open House and thereupon the Speaker in open session and in the presence of the House affixed his signature thereto.
>
> Ordered that the Enrolling Clerk to deliver the same to the Senate. (HJ at 324)
>
> Said Resolution having been signed by the Speaker of the House of Representatives, the President of the Senate affixed his signature thereto, and it was delivered to the Committee to be returned to the House of Representatives. (SJ at 435)
>
> After a time the Enrolling Clerk delivered the original and enrolled resolution duly signed by the President of the Senate into the possession of the Chief Clerk of this House.
>
> Ordered that the Chief Clerk of this House deliver said enrolled resolution to the Governor.
>
> After a time the Clerk reported that he had discharged that duty. (HJ at 324)

Here we see that the Kentucky legislators intended to give their Governor the opportunity to approve or disapprove H. Res. 4.

Evidently, however, someone in the Kentucky legislature recognized that H. Res. 4 had

not been passed in exactly the same form in both houses, and, that, therefore, H. Res. 4 would need to be passed again. The House journal shows that, in the House, reliance was made on the previous count of yeas and nays, H. Res. 4 merely being re-engrossed and transmitted a second time to the Senate. (SJ at 486, extracts)

Once again, the Senate suspended its rules and took up the resolution for consideration. Having considered H. Res. 4, the Senate journal claims that the Senate concurred again, this time on February 8th—

> And the question being taken upon the concurring in the adoption of said Resolution, it was decided in the affirmative. (SJ at 486)

On February 9th, the House received a message from the Senate announcing their concurrence. (SJ at 435, HJ at 382)

The joint resolution was then going to be sent on to the Governor again, so that he might forward an authentic copy of that resolution to the President.

From the preceding entries in the journals it might have appeared that the Legislature of the State of Kentucky had, once again, ratified the proposed Sixteenth Amendment. Upon closer inspection, however, it can be seen that, once again, they did not.

The version of H. Res. 4 received this time by the Senate read as follows—

> WHEREAS, the Congress of the United States on July, __, 1909, adopted a joint resolution, proposing an amendment to the Constitution of the United States, as follows:
>
> Resolved, by the Senate and House of Representatives of the U. S. A., in Congress assembled, two-thirds of each House concurring therein, that, the following article is proposed as an amendment to the constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several States, shall be valid to all intents and purposes, as a part of the constitution:
>
> "Article XVI. The Congress shall have power to lay and collect taxes on incomes from whatever sources derived, without apportionment among the several States, and without regard to any census or enumeration." And the foregoing proposed amendment having been laid before the Legislature of the State of Kentucky for consideration and action:
>
> Now Therefore, be it resolved by the General Assembly of the Commonwealth of Kentucky: That the foregoing amendment to the Constitution of the United States be, and the same is hereby ratified to all intents and purposes as a part of the constitution of the United States.
>
> 2. That the Governor of this State is thereby requested to forward to the President of the United States an authentic copy of the foregoing Joint Resolution. (SJ at at 486)

This time there were 13 discrepancies between the version of H. Res. 4 originally introduced in the House and the H. Res. 4 transmitted to the Senate after having been re-engrossed. The most serious error was the changing of the word "source" to "sources". In other words, the two houses of the Kentucky legislature were still in disagreement as to the wording of H. Res. 4.

In the vote taken on February 8th, the recorded roll call count of the votes in the Senate reveals that 22 Senators voted in the negative and 9 Senators voted in the affirmative. (SJ at 487) (See Appendix) The version of the Senate journal sent in extract to Philander Knox shows that the vote was "Yeas 27, nays 2." However, Knox, having also received a copy of the official published journals showing the vote of yeas, 9, nays, 22, at the very least,

should have sent a telegram to someone in the Kentucky administration asking for a verification. He did not, choosing to believe the unofficial extract instead of the official published journals.

On February 10th, H. Res. 4 was, once again, found correctly enrolled in the House of Representatives of the Kentucky Legislature and the signing ceremony was had, once again—

> Whereupon all other business was suspended, said resolution was read at length and compared in open House, and was found to be correctly enrolled, Thereupon the Speaker of the House of Representatives in open session in the presence of the House affixed his signature thereto.
>
> Ordering that the Enrolling Clerk deliver same to Senate. (HJ at 423)

The corresponding signing in the Senate did not take place until the 11th—

> Said resolution was then read at length and compared in the Senate and found to be correctly enrolled. Whereupon the President, in open session of the Senate, affixed his signature thereto and it was delivered to the Committee to be returned to the House of Representatives.
>
> After a short time Mr. Gus Brown reported that the Committee had performed that duty. (SJ at 602)

Both the House and Senate violated Section 56 of the Kentucky State Constitution—

> No bill shall become a law until the same shall have been signed by the presiding officer of each of the two Houses in open session; and before such officer shall have affixed his signature to any bill, he shall suspend all other business, declare that such bill will now be read, and that he will sign the same to the end that it may become a law. The bill shall then be read at length and compared; and, if correctly enrolled, he shall, in presence of the House in open session, and before any other business is entertained, affix his signature, which fact shall be noted in the journal, and the bill immediately sent to the other House. When it reaches the other House, the presiding officer thereof shall immediately suspend all other business, announce the reception of the bill, and the same proceeding shall thereupon be observed in every respect as in the House in which it was first signed. And thereupon the clerk of the latter House shall immediately present the same to the Governor for his signature and approval.
>
> (footnote) Sec. 56. The signatures of the presiding officers and of the Governor not conclusive as to the proper passage of a bill. (Norman, Auditor, v. Ky. Board of Managers, 14 Ky. L. R., 529.)

In neither house did the presiding officer make the necessary declaration that the bill was about to be read and signed. In the Senate, all other business was not suspended. In addition, either the House did not send H. Res. 4 immediately to the Senate after the signing, or the Senate did not immediately take up H. Res. 4 for signing upon its receipt from the House. The two signings are a day apart.

Governor Willson was sent H. Res. 4 after the signing on the 11th of February. That same day, he sent the House the following greeting—

> House of Representatives of the Commonwealth of Kentucky.
>
> I am directed by the Governor of the Commonwealth of Kentucky to inform your Honorable Body that he returns **without approval** H. Res. 4., having made the following remarks thereon "This resolution was adopted **without jurisdiction** of the joint resolution of the Congress of the United States which had not [been]

transmitted to and was not before the General Assembly, and in this resolution the words "on incomes" were left out of the resolution of the Congress and if transmitted in this form would be **void** and would subject the Commonwealth to unpleasant comment and for these reasons and because a later resolution correcting the ommission (sic) is **reported** to have passed both Houses, this resolution is returned to the House of Representatives without my approval. February 11th, 1910. (emphasis added) (extract)

The Governor, thus, had vetoed the measure for two reasons—one, the Senate and House had passed upon two different engrossments, and, two, the Legislature did not have jurisdiction of the official copy of the Congressional Joint Resolution. The procedural and jurisdictional problems mentioned by the Governor, were the objections with which he returned the resolution as disapproved under the provisions of Section 88 of the Kentucky State Constitution—

> Every bill which shall have passed the two Houses shall be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it, **with his objections,** to the House in which it originated, which shall enter the objections in full upon its journals, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which it shall likewise be considered, and if approved by a majority of all the members elected to that House, it shall be a law . . ." (emphasis added)

In their first attempt to ratify, the words "on incomes" had been left off of the engrossment and, therefore, the Senate voted upon a nullity which would have, according to the Governor, subjected the State of Kentucky to an embarrassing amount of "unpleasant comment." Their second attempt was no better, in terms of the mismatched versions of H. Res. 4 which the Senate and the House had supposedly passed (and the Senate had actually rejected) and in terms of the constitutionally defective process through both houses, but, as the Governor had pointed out, and to which he objected, due to a lack of jurisdiction, none of it counted. The Legislature had the choice of reconsidering the legislation, but—

> The House members decided to put off reconsideration.
> Mr. Klair moved that the consideration of said communication be postponed until 11 o'clock, Tuesday next, the 15th instant.
> Said motion was agreed to.

(What the members of the House probably didn't know was that Kentucky's certified copy of the official Congressional Joint Resolution was likely the source of some "unpleasant comment" in Washington, D. C. at the Department of State.

The Governor's staff in moving to new headquarters "misplaced" the first official, certified copy of the Joint Resolution. On February 8th, 1910, the Governor sent a telegram to Knox, requesting another copy which was promptly sent out by mail.)

Later the next week, on February 16th, the real certified copy of the Joint Resolution of Congress made its first and only appearance on the floor of the Kentucky House, in its first and only transmittal by the Governor.

> MESSAGE OF AUGUSTUS E. WILLSON, GOVERNOR OF KENTUCKY, TO THE GENERAL ASSEMBLY OF KENTUCKY.
> Transmitting the Income Tax Amendment to the Constitution of the United

States, proposed by Joint Resolution of the Sixty-first Congress of the United States of America at the first session begun, and held at the city of Washington, on Monday, the fifteenth day of March one thousand nine hundred and nine. (HJ at 497)

Gentlemen:

I transmit herewith to the General Assembly the Joint Resolution of the Sixty-first Congress of the United States, at its first session, begun and held at the city of Washington, the 15th day of March, one thousand nine hundred and nine, entitled, "Joint Resolution proposing an amendment to the Constitution of the United States, which is as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

"Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." (HJ at 498)

Also the official notice and letter of the Secretary of State of the United States, dated July 26, 1909, transmitting said record of said resolution of the Congress of the United States to the Governor of the State of Kentucky, with the request that I cause the same to be transmitted to the Legislature of Kentucky for such action as may be had, and that a certified copy of such action, be communicated to the Secretary of State as required by Section 205 Revised Statutes of the United States, copy of which was attached to said notice and letter of the Secretary of State, and a copy of which is herewith transmitted. The original official letter of the Secretary of State of the United States is in the office of the Secretary of State of Kentucky, but may be considered as before the Legislature of Kentucky, and the original, will, whenever it is desired, be presented in each House and delivered into its custody and may be considered **now** as in the custody of each House **for the purpose of its proper consideration and the decision of the Legislature.** (emphasis added) (HJ at 498)

Which was read at length and referred to the Committee on Federal and State Constitutional Amendments. (HJ at 502)

H. Res. 4, in conjunction with the Governor's objections to the first two attempted passages of that resolution, came up for reconsideration twice, once on February 16th and again on February 18th. (HJ at 514 and 544) Reconsideration was postponed until February 23rd.

On February 23rd, Mr. Brooks offered another resolution, entitled, "H. Res. 20. Resolution ratifying the Sixteenth Amendment to the Constitution of the United States." (HJ at 566) The House Journal shows that it passed the House, 79 in the affirmative and 3 in the negative. (HJ at 566) A message was sent to the Kentucky Senate on February 24th announcing the House adoption. (SJ at 826) The Senate refused to take up the resolution for consideration. On March 15th, the Senate, again, refused to take up the resolution for consideration. (SJ at 1703)

So, H. Res. 20 died, no further action being taken.

Apparently, Governor Willson believed that the Kentucky legislature had already passed H. Res. 4, because in his address to the Legislature on February 24th, 1910, he made the following remarks about income tax, some of them, one would hope, with tongue in cheek—

> . . . The Federal Government, which has already the power under which it collects from Kentucky for the Federal Government millions of dollars more every year than the State collects for its government, does not need more . . . Too many people jump at the thought, that income taxes take some of the burden off of the many and put it on the notorious rich, none of whom live where we do and none of whom are our neighbors. But the income of all these multimillionairs (sic) will pay only a small part of a National income tax. It will take one or two millions a year out of our people and we give the power as lightly as one offers a cigar. All it needed was for some man, whose thinking did not equal his voice, to clamor for it and everybody jumped to make the greatest State's right State in the Union, cast what is probably the deciding vote for the greatest grant of power to the Federal Government over the States since the Constitution was first adopted.
>
> . . . we are on a National income tax "joy-ride" for the Federal Government whether it needs it or not, and no matter what we pay already. Let us seize on this best chance of all to pay our debts and raise everybody's salary but those forbidden by the Constitution. (HJ at 619)

The Solicitor of the Department of State apparently believed that the State of Kentucky had ratified because the extracts of the journal of the Kentucky Senate sent to Knox contained an entry claiming the vote on H. Res. 4 on the 8th of February was 27 in the affirmative and 2 in the negative. The official published journal, which was also sent to Knox, and from which the extract was taken, reveals a vote of 9 in the affirmative and 22 in the negative. The official published version must, of course, rule in this instance. Yet there was never a question on the part of Knox or his Solicitor. There was, thus, no certified copy of any resolution validly passed by the Kentucky Legislature transmitted to Washington.

The question remains as to why the Governor believed that the amendment had been ratified in the face of a journal which showed otherwise? And, in spite of his rejection of H. Res. 4 which never again came to his desk after his rejection? Was the Governor perhaps shown the same kind of bogus figures which were sent to Knox in the extracts of the journals for a subsequent vote or, perhaps, was he shown a memo which said that the resolution had passed when it hadn't, much like Senate journal at 487?

Finally, Section 181 of the Kentucky State Constitution provides that—

> The General Assembly shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect taxes.

H. Res. 4, had it been validly passed, would have been in violation of this section—this provision contains absolutely no allowance for the State Legislature to confer the kind of taxing authority which H. Res. 4 comprehended.

The purported ratification of the proposed Sixteenth Amendment on the 8th and 9th of February by the State of Kentucky was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress—H. Res. 4, as recorded on January 26th in the House and February 8th in the Senate, contains the following changes from the original Congressional Joint Resolution—

a. the comma was deleted between the word "incomes" and the word "from"

b. the Senate version has the word "source" changed to "sources"

c. neither version has a correct preamble

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

3. Failure of the Legislature to have jurisdiction of the certified copy of the Congressional Joint Resolution as indicated by Governor Willson until after February 16th

4. Violations of the Kentucky State Constitution—

a. neither the Speaker nor the President made the proper constitutional declaration, before affixing their signatures to H. Res. 4, on February 8th or 9th in violation of Section 56

b. either the House failed to deliver the copy of H. Res. 4 signed by the Speaker immediately thereafter to the Senate, or the President failed to immediately suspend all other business upon receipt of H. Res. 4 on the 9th of February in violation of Section 56

c. the House violated Section 46 in its passage of H. Res. 4 on the 26th of January 26th by failing to read H. Res. 4 at length on three different days without dispensing with that provision by a majority of all the members elected to that House

d. the Legislature was not permitted under Section 181 to confer the authority which H. Res. 4 comprehended

5. H. Res. 4 was disapproved by Governor Willson on February 11th, the House having intended to present the resolution to the Governor for such approval by introducing the amendment resolution as a joint resolution and by the fact of their having presented that resolution to him for such approval, and the Kentucky legislature was never again able to get H. Res. 4, nor its successor, H. Res. 20, passed through both houses.

6. H. Res. 4 was reejected by the Senate and fraudulently represented by both the State of Kentucky and by Philander Knox as having been ratified.

South Carolina—February 19th, 1910

On January 11th, 1910, the Governor of South Carolina, M. F. Ansel, as a part of his address to the South Carolina Legislature, transmitted his certified copy of S. J. Res. 40. (HJ at 21) That same day, a simple House resolution was passed to refer that material to committee. (HJ at 23)

On February 4th, the following resolution was introduced, read the first time by title, and referred to the Judiciary Committee—

> H. 1251.-Mr. M. L. SMITH: A Joint Resolution ratifying the Sixteenth Amendment to the Constitution of the United States of America. (HJ at 349)

On the 9th, H. 1251 was ordered for consideration for the 10th. (HJ at 501) There is no record of consideration of H. 1251 on the 10th. H. 1251 was taken up, instead, on the 15th. It is recorded as having been read the second time, but not at length. Failure of the second reading to be at length was a violation of Article III, Section 18 of the South Carolina State Constitution, which provides—

> No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it, and has been signed by the President of the Senate and the Speaker of the House of Representatives: **Provided,** That either branch of the General Assembly may provide by rule for a first and third reading of any Bill or Joint Resolution by title only.

H. 1251 was then ordered to a third reading on the 16th of February. (HJ at 664) On the 16th, H. 1251 was taken up for a vote on final passage—

> H. 1251.-Mr. M. L. SMITH: A Joint Resolution ratifying the Sixteenth Amendment to the Constitution of the United States of America.
>
> **Whereas,** both Houses of the Sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to wit:
>
> A Joint Resolution proposing an amendment to the Constitution of the United States.
>
> **Resolved** by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of each House concurring therein, that the following article is proposed as an amendment to the Constitution of the United States, which when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution, namely:
>
> ARTICLE XVI.
>
> The Congress shall have power to levy and collect taxes on incomes, from

whatever source derived, without apportionment among the several States, and without regard to any census or enumeration, therefore,

Be it resolved by the Senate and House of Representatives of the State of South Carolina:

SECTION 1. That the said proposed amendment to the Constitution of the United States of America, be, and the same is hereby, ratified by the General Assembly of the State of South Carolina.

SEC. 2. That certified copies of this preamble and Joint Resolution be forwarded by the Governor of this State to the President of the United States, to the presiding officer of the United States Senate and to the Speaker of the United States House of Representatives.

Mr. M. L. SMITH demanded the yeas and nays, which were taken, resulting as follows:

Yeas, 101; nays, 4.

Those who voted in the affirmative are:

. . . -101.

Those who voted in the negative are:

. . . -4.

The Joint Resolution having received three readings, it was ordered sent to the Senate.

Mr. M. L. SMITH moved to reconsider the vote whereby the House ordered the Joint Resolution sent to the Senate, and to lay that motion on the table.

Which was agreed to. (HJ at 697)

The third reading of H. 1251, which was the only one recorded at length, revealed that the joint resolution as voted upon in the House contained the following changes from the official Congressional Joint Resolution—

1. the preamble was modified—

a. the open paren after the word "assembled" was changed to a comma

b. the closing paren after the word "therein" was deleted

c. the word "That" was changed to "that"

d. the comma after the word "which" was deleted

e. the colon after the second instance of the word "Constitution" was changed to a comma

f. the word "namely" was added after the second instance of the word "Constitution"

2. the word "lay" was changed to "levy"

3. the ending period was changed to a comma

4. the word "therefore" and the next three paragraphs were appended to the proposed amendment by virtue of the changing of the ending period to a comma

These changes made to the official wording were a violation of the duty which the South Carolina Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

After the vote in the House on H. 1251, it was introduced as S. 1288 under a suspension of Senate Rule 36 providing for the printing of bills and then read the first time by title and referred to the Committee on Judiciary. (SJ at 514) The Senate was then adjourned until 8 P. M. that night at which time S. 1288 was reported as S. 1228 without recommendation and ordered for consideration the next day. (SJ at 526)

The next day, the 17th of February, the following was had in the Senate—

> Mr. SINKLER moved to strike out the enacting words of the Resolution.
>
> After debate by Messrs. GRAYDON, WALKER, SINKLER, and HAMRICK against, and Mr. MAULDIN for, the Resolution, Mr. LANEY moved to adjourn debate until 11:15 tomorrow, which motion was adopted. The pending question being the motion of Mr. Sinkler to strike out the resolving words. (SJ at 567)

On the 18th, the pending question on the motion of Mr. Sinkler was not resolved. Instead, a motion was considered on whether to continue the debate, which lost. Then the following motion was considered—

> The question was taken on the passage of the Joint Resolution to a third reading, on which the yeas and nays were demanded and taken, resulting as follows:
>
> Yeas- . . . -24.
>
> Nays- . . . -15.
>
> So the Joint Resolution was passed to a third reading. (SJ at 632)

On February 19th, 1910, a Saturday, S. 1228 was taken up for a vote to pass the third reading—

S. 1228 (H. 1251.-Mr. M. L. Smith): A Joint Resolution ratifying the Sixteenth Amendment to the Constitution of the United States of America.

The question, shall the Joint Resolution pass a third reading and be enrolled for ratification, was put, on which the yeas and nays were demanded and taken, resulting as follows:

Yeas- . . . -22.

Nays- . . . -11.

So the Joint Resolution, having passed a third reading, was ordered enrolled for ratification.

I am paired with the Senator from Oconee. If he were present he would vote Aye, and I would vote No. WM. N. GRAYDON. (SJ at 658)

Not having read S. 1228 the second time at length in the Senate, Article III, Section 18 was again violated. Later that same day, S. 1228 was correctly enrolled and considered ready for ratification (signing by the presiding officers). (HJ at 905) Later still, H. 1251/S. 1228 was ratified as follows—

The House attended in the Hall of the Senate at various times during the evening, when the following Acts were ratified: (SJ at 727)

* * *

S. 1228 (H. 1251.-Mr. M. L. Smith): A Joint Resolution ratifying the Sixteenth Amendment to the Constitution of the United States of America. (SJ at 733)

Also, on Saturday, February 19th, H. 1251/S. 1228 was indicated as ratified in the House.

On March 9th, 1910, Governor Ansel transmitted a copy of a joint resolution to Philander Knox. This copy was undesignated as either H. 1251 or S. 1228. The Governor's transmittal letter reads—

I have the honor to enclose you (sic) a certified copy of the Joint Resolution passed at the last session of the General Assembly of South Carolina which ratified the Joint Resolution proposing an amendment to the Constitution of the United States as to the income tax. The action of the Legislature of South Carolina is certified to by the Secretary of State, under the great seal of the State, and it is my pleasure to enclose the same to you.

The certified copy sent by Ansel is unsigned by the President of the Senate, the Speaker of the House of Representatives, or the Governor. The text of that document reads as follows—

A Joint Resolution.

Ratifying the Sixteenth Amendment to the Constitution of the United States of America.

WHEREAS, Both Houses of the Sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to wit: A Joint Resolution Proposing an Amendment to the Constitution of the United States. Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, two-thirds of each House concurring therein: That the following article is proposed as an amendment to the Constitution of the United States, which when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution, namely, Article XVI. The Congress shall have power to lay and collect taxes on incomes, from

whatever source derived, without apportionment among the several states, and without regard to any census or enumeration. Therefore,

Section 1. Be it resolved by the Senate and House of Representatives of the State of South Carolina: That the said proposed amendment to the Constitution of the United States of America be, and the same is hereby ratified by the General Assembly of the State of South Carolina.

Sec. 2. That certified copies of this preamble and Joint Resolution be forwarded by the Governor of this State to the President of the United States, to the Presiding officer of the United States Senate and to the Speaker of the United States House of Representatives.

In the Senate House (sic) the 19th day of February, in the year of our Lord one thousand nine hundred and ten.

Thos. G. McLeod, President of the Senate.

Richard S. Whaley, Speaker of the House of Representatives.

Approved the 23rd day of Feby. , A. D. 1910.

M. F. Ansel, Governor.

The attached certificate from R. M. McCown, the Secretary of State of South Carolina read—

> I, R. M. McCown, Secretary of State of South Carolina and keeper of the Great Seal of said State, do hereby certify that the above foregoing two pages contain a true and correct copy of a Joint Resolution, ratifying the XVI Amendment to the Constitution of the United States of America as passed by the last General Assembly of the State of South Carolina, which was approved by the Governor on the 23rd day of February, 1910, and the original of which is now on file in my office.

This document did not, however, reflect what had been voted upon by the House and Senate of South Carolina. Many discrepancies are evident in text of the version sent to Washington, including—

1. the word "both" was changed to "Both"
2. the word "proposing" was changed to "Proposing"
3. the instance of the word "amendment" (after the word "proposing") was changed to "Amendment"
4. the word "the" was inserted before the first instance of the word "House"
5. the comma after the word "therein" was changed to a colon
6. the word "that" after the word "therein" was changed to "That"
7. the first instance of the word "States" after the word "several" was changed to "states"
8. the colon after the word "namely" was changed to a comma
9. the word "ARTICLE" was changed to "Article"
10. the word "levy" was changed to "lay"
11. the second instance of the word "States" after the word "several" was changed to "states"
12. the comma after the word "enumeration" was changed to a period
13. the word "therefore" was changed to "Therefore"
14. the phrase "Be it resolved by the Senate and House of Representatives of the State of South Carolina": was placed within the next paragraph
15. the word "SECTION" was changed to "Section"
16. the comma before the word "be" was deleted

17. the abbreviation "SEC." was changed to "Sec."

18. the word "presiding" was changed to "Presiding"

19. the first four paragraphs were consolidated into one paragraph

The document transmitted to Washington was, thus, quite obviously not the same resolution voted upon by the Legislature of South Carolina and there is no positive indication, either in the Governor's transmittal letter or in the sworn statement of the Secretary of State of South Carolina, that they are the same.

Finally, H. 1251/S. 1228 was passed in violation of Article X, Section 3 of the State Constitution of South Carolina which provided that—

> No tax shall be levied except in pursuance of a law which shall distinctly state the object of the same; to which object the tax shall be applied.

H. 1251/S. 1228 did not distinctly state the object to which any tax imposed under that resolution would be applied.

The purported ratification of South Carolina was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that H. 1251/S. 1228 contained the following changes from the official Congressional Joint Resolution—

a. the preamble was modified—

i. the open paren after the word "assembled" was changed to a comma

ii. the closing paren after the word "therein" was deleted

iii. the word "That" was changed to "that"

iv. the comma after the word "which" was deleted

v. the colon after the second instance of the word "Constitution" was changed to a comma

vi. the word "namely" was added after the second instance of the word "Constitution"

b. the word "lay" was changed to "levy"

c. the ending period was changed to a comma

d. the word "therefore" and the next three paragraphs were appended to the proposed amendment by virtue of the changing of the ending period to a comma

2. Failure to follow the guidelines for the return of a certified copy of the ratification action actually taken by the legislature as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878 in that the text in the document transmitted to Washington is not the same as that which was passed by the South Carolina Legislature

3. Violation of Article III, Section 18 of the South Carolina State Constitution in the failure of each house to read H. 1251/S. 1228 at length the second time

4. Violation of Article X, Section 3 of the South Carolina State Constitution in that the object to which any tax to be imposed under H. 1251/S. 1228 is to be applied is not distinctly stated

Illinois—March 1st, 1910

The Governor of Illinois, Charles S. Deneen, delivered a message to the Illinois Legislature on the 14th of December, 1909, which contained the following remarks—

> AMENDMENT TO FEDERAL CONSTITUTION.
>
> The National Congress has adopted a joint resolution for submission to the General Assemblies of the states respecting an amendment to the Federal Constitution enabling Congress to impose an income tax. It is a **disputed** question whether or not such a tax should be imposed by the nation in ordinary times, but it seems to me that a nation should possess this power as one of the attributes of sovereignty. A nation which possesses the power to call upon its citizens for service on the battlefield, should possess the power to impose an income tax whenever it may be necessary to meet national emergencies. (SJ at 23)

Governor Deneen urged ratification of the proposed Sixteenth Amendment so that, during a national emergency, Congress could impose an income tax.

In response to the above, Illinois Senator Hurburgh introduced a resolution to the Senate on January 18th, 1910—

> SENATE JOINT RESOLUTION NO. 7.
>
> WHEREAS, The Congress of the United States has proposed to the several states the following amendment to the Federal Constitution, viz.:
>
> "Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration"; therefore, be it
>
> **Resolved, By the Senate, the House of Representatives concurring therein**, That the State of Illinois, by its Legislature, ratifies and assents to this amendment. (SJ at 197)

Upon Mr. Hurburgh's own motion, consideration of this motion was postponed until that afternoon as a special order. Also postponed were the first reading, the order for printing and the referral to committee required by Senate Rule 47. (SR at 57) "That afternoon" was delayed until the 9th of February, but when the resolution was brought up, the vote upon S. J. R. No. 7 came very quickly thereafter—

> The President of the Senate announced the special order for this hour to be the consideration of the following resolution offered by Mr. Hurburgh, January 18, 1910 . . .
>
> And the question being, "Shall the resolution be adopted?" and the yeas and nays being called, it was decided in the affirmative by the following vote: Yeas, 41. (SJ at 199)

This vote was taken in violation of Article IV, Section 13 of the Illinois State Constitu-

tion of 1870. S. J. R. No. 7 was not read at large on three different days in the Senate, nor was it printed before the vote was taken on its final passage.

Previously, in the Illinois House, Representative Dillon had offered the following resolution on January 4th, 1910—

> HOUSE JOINT RESOLUTION NO. 1.
>
> **Resolved, By the House of Representatives of the State of Illinois, the Senate concurring therein,** That the amendment proposed by the Congress of the United States to the Constitution of the United States in the words and figures following:
>
> "Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to census or enumeration."
>
> Be and the same is hereby ratified by the Legislature of the said State of Illinois.
>
> The foregoing resolution was referred, under the rules, to Committee on Judiciary. (HJ at 76)

The House was, thus, in violation of their procedural Rule 20 (HR at 89), having complied in only one of their duties in the introduction of resolutions—referral to committee.

The Committee on Judiciary reported H. J. R. No. 1 back on February 2nd, with a recommendation for adoption and their report was ordered to lie on the Speaker's table for one day. (HJ at 222)

On the 15th of February, with H. J. R. No. 1 still lying on the Speaker's table, the House received the following message from the Senate—

> A message from the Senate by Mr. Osgood, Assistant Secretary: Mr. Speaker—I am directed to inform the House of Representatives that the Senate has adopted the following preamble and joint resolution, in the adoption of which I am instructed to ask the concurrence of the House of Representatives, towit (sic):
>
> SENATE JOINT RESOLUTION NO. 7.
>
> WHEREAS, The Congress of the United States has proposed to the several states, the following amendment to the Federal Constitution, viz.:
>
> "Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration"; therefore, be it
>
> **Resolved, By the Senate, the House of Representatives concurring therein,** That the State of Illinois, by its Legislature, ratifies and assents to this amendment.
>
> Adopted by the Senate February 9, 1910.
>
> J. H. Paddock,
>
> Secretary of the Senate.
>
> The foregoing Senate Joint Resolution No. 7 was ordered to lie on the Speaker's table. (HJ at 230)

On March 1st, 1910, S. J. R. No. 7 was quickly taken up for a vote—

> The Speaker laid before the House, Senate Joint Resolution No. 7 . . .
>
> Whereupon, Mr. Dillon moved that the House concur with the Senate in the adoption of the foregoing resolution.
>
> And on that motion a call of the roll was had, resulting as follows: Yeas, 80 [83]; nays, 8. (HJ at 318)

In *Ryan v. Lynch*, 68 Ill, 160, a certificate of the Secretary of State purporting to give full and true copies of the journals of the senate and house relating to the passage of the bill

was in evidence and did not show that the bill was read three times on three different days nor passed on a vote of the ayes and noes, as required by the constitution, and the court said that the bill never became a law and was as completely a nullity as if it had been the act or declaration of an unauthorized assemblage of individuals.

In *People v. Knopf*, 198 Ill. 340, the court again stated the rule that if the facts essential to the passage of a law are not set forth in the journal the conclusion is that they did not transpire, and if the journal fails to show that an act was passed in the mode prescribed by the constitution the act must fail.

The official version of S. J. R. No. 7 is recorded under the 46th General Assembly/Box 438-No.16179 of the record series, **Enrolled Acts** of the General Assembly (RS103.30)," as well as in *Laws of the State of Illinois Enacted by the 46th General Assembly at the Special Session* at 94—

> (Senate Joint Resolution No. 7.)
>
> WHEREAS, The Congress of the United States has proposed to the several states the following amendment to the Federal Constitution, viz.:
>
> "Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or renumeration.
>
> **Therefore be it resolved by the Senate, the House of Representatives concurring therein**, That the State of Illinois, by its legislature, ratifies and assents to this amendment.

This is the version of the resolution as received by Secretary of State of the United States, Philander Knox which was unsigned.

S. J. R. No. 7 contains the following changes to the official text of the Congressional Joint Resolution—

1. the word "States" was changed to a common noun
2. the word "enumeration" was changed to the word "renumeration"

In addition, the preamble from the Congressional Joint Resolution was completely deleted.

Any modifications to the official Congressional Joint Resolution were a violation of the duty which the Illinois Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.**

> Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed amendment to the Supreme Law of the land.

Finally, the Illinois Legislature was not permitted by the State Constitution to confer taxing powers upon any other body than those listed in Article IX, Section 9 which provided that—

> The General Assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment or by special taxation of contiguous property or otherwise. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

The Illinois Legislature committed the following violations in their purported ratification of the proposed Sixteenth Amendment—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. R. No. 7 changed the official Congressional Joint Resolution in the following manner—

a. the original preamble was completely deleted

b. the word "States" was changed to a common noun

c. the word "enumeration" was changed to the word "renumeration"

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and required by Section 205 of the Revised Statutes of 1878. 3. Failure to follow the guidelines of Article IV, Section 13 of the Illinois State Constitution in that

a. S. J. R. No. 7 was not read at large on three different days in the Senate

b. S. J. R. No. 7 was not printed before the vote was taken on final passage

4. Violation of Article IX, Section 9 in that S. J. R. No. 7 conferred taxing power which the Legislature of the State of Illinois had not the authority to confer.

Mississippi—March 7th, 1910

In a letter dated July 30th, 1909, E. F. Noel, Governor of the State of Mississippi, acknowledged receipt of a certified copy of the Congressional Joint Resolution proposing the Sixteenth Amendment to the Constitution of the United States. At the beginning of the next session of the Mississippi Legislature, a special session commencing January 4th, 1910, Governor Noel included the following opinion in his address to the legislators—

> INCOME TAX AND CONSTITUTIONAL AMENDMENT.
>
> The most equitable of all taxes are those upon net incomes in excess of the few thousands of dollars, exempted to meet expenses of living or unexpected business reverses. This power of the Federal Government, after its exercise for many years, was nullified by an almost evenly divided decision of the United States Supreme Court. As a revenue collector, in times of war, its use might avert greater disaster. Through our own, or party, tax, which can noly (sic) be realized through an amendment to the Federal Constitution, which amendment is submitted to you tor action by Congress.
>
> The income tax on corporations is fought on the ground of its not applying to individuals. The adoption of this amendment meets that objection and empowers the Federal Government, in its discretion, to call for a share of the net incomes of those who are most able to contribute to tme (sic) expense of government.

The very next day,

> The following Senate joint resolution was introduced by Senator Franklin, of the Thirty-first District, and referred to the Committee on Constitution:
>
> Of the Legislature of the State of Mississippi, ratifying the sixteenth amendment of the Constitution of the United States.

This resolution was accompanied by a nearly accurate certified copy of the Congressional Joint Resolution as received by the Governor. (SJ at 27)

Representative Dorroh introduced a House version of the ratification resolution on the 24th of January—

> House Joint Resolution No. 14, A Joint Resolution of the Legislature of the State of Mississippi ratifying and approving the amendment to the Constitution of the United States relative to income tax.
>
> Read twice and referred to Committee on Judiciary. (HJ at 171)

Under Article IV of the Mississippi State Constitution, Section 59 provided that—

> Bills may originate in either house and be amended or rejected in the other; and **every bill shall be read on three different days in each house unless two-thirds of the house where the same is pending shall dispense with the rules**; and every bill shall be read in full immediately before the vote on its final passage; and every bill

having passed both houses, shall be signed by the president of the senate and the speaker of the house of representatives, in open session; but before either shall sign any bill, he shall give notice thereof, suspend business in the house over which he presides, have the bill read by its title, and on the demand of any member, have it read in full; and **all such proceedings shall be entered on the journal.** (emphasis added)

Of course, every legislator in the State of Mississippi must have read that section of the State Constitution. Each of them had supposedly taken the oath of office prescribed by Section 40 of that Constitution.

> Members of the legislature before entering upon the discharge of their duties shall take the following oath: "I, _____, do solemnly swear (or affirm) that I will faithfully support the constitution of the United States and of the State of Mississippi . . . that I will faithfully discharge my duties as a legislator; that **I will, as soon as practicable hereafter, carefully read (or have read to me) the constitution of this State, and will endeavor to note, and as a legislator, to execute all the requirements thereof imposed on the legislature . . . So help me God.**" (emphasis added)

There not having been a prior and proper suspension of the rules for H. J. R. No. 14, that resolution was invalid at that point, the first two readings in the House having been on the same day.

On the 27th, H. J. R. No. 14 was reported out of committee with a favorable recommendation.

> REPORT OF COMMITTEE ON JUDICIARY.
>
> MR. SPEAKER: The Committee on Judiciary has had under consideration the following **bills** referred to them, and have instructed me to report them back with the following recommendations:
>
> Joint Resolution No. 14 of the Legislature of the State of Mississippi, ratifying and approving the amendment to the Constitution of the United States relative to income tax.
>
> Title sufficient; resolution be adopted. (HJ at 189) (emphasis added)

Two days later, H. J. R. No. 14 was taken up and then voted upon.

> Mr. Quin called up for consideration House Joint Resolution No. 14, A Joint Resolution of the Legislature of the State of Mississippi, ratifying and approving the amendment to the Constitution of the United States relative to the income tax.
>
> Mr. McCullough offered the following amendment:
>
> Strike out the words "two-thirds of the House and Senate concurring therein."
>
> On motion of Mr. McCullough the amendment was adopted.
>
> Whereupon, on motion of Mr. Dorroh, the resolution, as amended, was read and the Clerk called the roll, and the resolution was adopted by the following vote:
>
> Yeas- . . . -Total 85.
>
> Absent and those not voting- . . . -51. (HJ at 214)

As is duly recorded in Document No. 240 of the 71st Congress, the Mississippi House did not approve the proposed amendment, the Yeas carrying only 62.5% of the vote, less than a two-thirds majority.

On the 31st of January, the House sent the following message to the Senate—

> . . . the House of Representatives has passed the following entitled **bills**, which are herewith transmitted, to-wit:

* * *

House Joint Resolution of the Legislature of the State of Mississippi ratifying and approving the amendment to the Constitution of the United States relative to income tax. (emphasis added)

The Senate then suspended the rules and read H. J. R. No. 14 twice and referred it to the Judiciary committee. (SJ at 163) On February 8th, H. J. R. No. 14 was favorably reported out. (SJ at 244, 245)

On March 7th, the following occurred in the Senate—

Mr. Anderson called up House Joint Resolution No. 14, A Joint Resolution of the Legislature of the State of Mississippi ratifying and approving the amendment to the Constitution of the United States relative to the income tax, and moved that Senate concur in the adoption of the resolution, which motion was ratified by the following vote:

Yeas- . . . -Total 28.

Nays- . . . -Total 2.

Absent and those not voting- . . . -Total 15.

In like manner as the House, the Senate failed to ratify the proposed Sixteenth Amendment in that the vote on H. J. R. No. 14 was only 62.2% in favor.

The Senate vote was, also, in violation of Article IV, Section 59 of the Mississippi State Constitution. Suspension of the rules only applied to the constitutional requirement of three readings. Unsatisfied was the constitutional requirement that—

. . . every bill shall be read in full immediately before the vote on its final passage . . . and all such proceedings shall be entered on the journal.

On the 8th, the Senate sent a message to the House that the Senate had concurred in H. J. R. No. 14. (HJ at 758) On the 10th, the resolution was duly signed according to the State Constitution. (HJ at 814, SJ at 562)

The Mississippi version of the proposed amendment, H. J. R. No. 14, as received in Washington, but, never recorded in the Mississippi journals, read as follows—

HOUSE JOINT RESOLUTION No. 14.

JOINT RESOLUTION of the Legislature of the State of Mississippi ratifying and approving the proposed amendment to the constitution of the United States relative to Income Tax.

WHEREAS, The 61st Congress of the United States of America at the first session begun and held in the city of Washington, on Monday, the 15th day of March, 1909, proposed an amendment to the Constitution of the United States in words and figures as follows:

"Article XVI. Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several states, and without regard to any census of enumeration":

NOW, THEREFORE, Be it resolved by the legislature of the State of Mississippi, That the foregoing resolution, being the Sixteenth Amendment to the Constitution of the United States be and the same is hereby approved and ratified.

The following changes were made by the Mississippi Legislature to the official Congressional Joint Resolution—

1. the original preamble was deleted
2. the first instance of the word "The" was deleted

3. the commas before and after the phrase "from whatever source derived" were deleted
4. the word "States" was changed to a common noun
5. the word "or" was changed to "of"
6. the period was changed to a colon
7. the final paragraph in the resolution was added to the proposed amendment by virtue of the final colon

These changes were in violation of the duty which the Mississippi Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97th CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is **extremely important** that the Senate receive a copy of the bill in the **precise form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed amendment to the Supreme Law of the land.

Finally, the copies of H. J. R. No. 14 transmitted to Washington were unsigned.

The purported ratification of the proposed Sixteenth Amendment by the Legislature of the State of Mississippi was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that H. J. R. No. 14 contained the following changes—
   a. the preamble was deleted
   b. the first instance of the word "The" was deleted
   c. the commas before and after the phrase "from whatever source derived" were deleted
   d. the word "States" was changed to a common noun
   e. the word "or" was changed to "of"

f. the period was changed to a colon

g. the final paragraph of H. J. R. No. 14 was appended to the proposed amendment

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878.

3. The House violated the Mississippi State Constitution in failing to read H. J. R. No. 14 three times on three separate days.

4. The Senate violated the Mississippi State Constitution in failing to read H. J. R. No. 14 in full immediately before the vote on its final passage.

Perhaps the legislators of Mississippi had an excuse for the violations of process that they committed, an excuse which was exposed in a House investigation conducted in March of 1910, entitled—

> INVESTIGATION BY A COMMITTEE OF THE HOUSE REPRESENTATIVES OF THE REPORT OF EMPTY WHISKEY BOTTLES FOUND IN THE CAPITOL. COMMITTEE: HON. A. C. ANDERSON, CHAIRMAN; HON. W. M. COX, HON. EUGENE GERALD, HON. C. E. SLOUGH, HON. I. L. DORROH.
>
> March 8 to __, 1910 . . . (HJ at 1536)

Though "keeper of the Capitol," the Secretary of State, Joseph W. Power denied knowledge of "any whiskey having been brought into the Capitol or dispensed from any room in the Capitol," nor, did he have "any reason to suspect" it. Power's engineer of the Catitol, Joe McDonald refuted Power's testimony, stating that he had reported to Power the presence of whiskey in the building. McDonald indicated that about 30 empty bottles had been found by the porter in cleaning up. State Representative Blakeslee, initially intimated as having something to do with all those whiskey bottles, identified the porter who discovered the whiskey bottles as under the supervision of Power. (HJ at 1541)

The porter testified that there had been no previous similar incident. (HJ at 1543) After persistent questioning, he admitted that McDonald ordered him to keep quiet about the incident.

The question is, what was there to keep quiet? Why the big binge right at the time that the House had taken up consideration of the ratification of the proposed Sixteenth Amendment? Any why would Mr. McDonald want his porter to shut up about the incident? And why would Secretary of State Power stonewall the incident? Did the whiskey help grease H. J. R. No. 14's way through the House? Was this incident related to the charge, the investigation of which was reported on April 16th, 1910 in the House journal, of whiskey being used to influence the votes in the Democratic caucus?

In an archival document labeled "1910 House Journal Eightieth Day April 16/1910 Duplicate" the following is recorded—

> Mr. Cavett offered the following:
>
> In view of the scandalous rumors which have been circulated touching the recent Senatorial contest , (sic) the House of Representatives takes pleasure in saying to the people of Mississippi that we are convinced that the conduct of every candidate in the Senatorial contest was dignified and honorable and upright and that no vote in the caucus nomination was procured by any improper means or corrupt influence, and that the election of Senator Percy is free from fraud or corruption.
>
> And regardless of whether we have supported Senator Percy in the recent contest, or will support him in the approaching primary, we record with pleasure our

confidence in the chivalrous honor and personal integrity and our desire to hold up his hands in the performance of his high duties as a representative of this great commonwealth in the Senate of the United States.

On motion of Mr. Cavett, the Resolution was UNANIMOUSLY ADOPTED. (at 41)

Mr. Johnston of Coahoma offered the following Concurrent Resolution:

Resolved . . . to call and hold a special primary election . . . to be participated in only by white Democratic qualified electors . . . (42)

Mr. Speaker:

We, your Committee appointed (cross out) under the Foy Resolution Mch 19, 1910 with the duty of investigating whether certain charges of corruption and fraud , (sic) which were alleged to have been used in the recent Democratic caucus at which Senator LeRoy Percy was nominated; beg leave to report as follows:—

We have examined 67 (67 filling in an apparent blank) witnesses and all the testimony including questions and answers is now being transcribed by the stenographers and will be published as heretofore provided for by Resolution of the House. In the examination of witnesses we have spared no time or expense in trying to arrive at the truth,bringing (sic) witnesses here from all parts of the State and running down (sic) each and every rumor that came to our knowledge and examined every witness that we had any knowledge of (sic) who was even supposed to know, or even if it were rumored that he knew any (sic) facts that would aid us in our investigation.

After what we believe to be a full and thorough investigation, we have been unable to find any evidence of a single instance where the vote of a member was corruptly influenced and because thereof (sic) voted for some candidate other than his own choice.

In the opinion of your Committee Senator (sic) LeRoy Percy was fairly and honorably nominated by the Democratic Caucus. (at 49)

Mr. Speaker and Members of the House. We, the undersigned members of the House Investigating Committee under the Foy resolution of March 19, 1910, beg leave to submit this our minority report.

* * *

First. We believe that undue influence by the improper use of liquor was used upon at least one member of the House. This member was changed from his original conviction and, being unfortunately addicted to the use of strong drink was, by this improper influence, overpersuaded (sic) to vote against his real convictions.

Second. The evidence shows further that in other instances other members of the Legislature were approached and asked if money or political position would persuade them to change their vote, and this, we believe, was very improper.

Third. Even the patronage of the Federal government is shown to have been brought into play and used in this caucus . . .

Fourth. We submit that the executive patronage of Mississippi was used with telling effect . . . the Governor conferred and advised continually—and this was well known to every member of the caucus—with all the "opposition" candidates, their friends and members of the caucus as to the best methods to solidify the "opposition" and to persuade some members supporting ex-Gov. Vardaman to change their vote, was highly improper (sic)

* * *

Seventh. Whiskey was used excessively during the caucus. But there is no proof that any intoxicants were dispensed in the headquarters of any candidate. (at 50)

Oklahoma—March 14th, 1910

In an extraordinary session of the 2nd Legislature of the State of Oklahoma, held January 20th, 1919 to March 19th, 1910, Governor Haskell made the following a part of his address to that session—

UNITED STATES CONSTITUTIONAL AMENDMENT

By special message within a day or two, I shall transmit to you for your consideration and such action as you deem proper, a proposed amendment to the constitution of the United States, authorizing the levy of Federal income tax. I am delayed in transmitting this matter to you, as I desire to have the benefit of the consideration of your Honorable Body and myself of opinions given upon this subject by eminent men in other states, and whose opinions may be a light to us well worthy of our consideration. (SJ at 35)

On February 10th, 1910, the Governor delivered his eleventh message of the session to the Legislature.

> I submit to you for your consideration, approval or rejection, an amendment to the Constitution of the United States, relating to the income tax. A copy of the communication from the Secretary of State of the United States is herewith attached.
>
> After careful consideration of this subject I find it possible of the accomplishment of much good, as well as capable of undesirable results, and in approving this amendment the people of the States must do so with their eyes open, realizing that it **vests the Congress of the United States with power for evil as well as good results, depending upon the will of the Congress** from time to time.
>
> It is therefore a question upon which you must be the judges of the creation of such additional legislative power in the Congress of the United States. (HJ at 234) (emphasis added)

In the House journal, immediately following this message, the Congressional Joint Resolution appears as transmitted to the Oklahoma Legislature.

> SIXTY-FIRST CONGRESS OF THE UNITED STATES OF AMERICA AT THE FIRST SESSION.
>
> Begun and held at the City of Washington on Monday, the fifteenth day of March, one thousand nine hundred and nine.
>
> JOINT RESOLUTION.
>
> Proposing an amendment to the Constitution of the United States.
>
> Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the

Constitution:

"Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." (HJ at 235)

The above record in the journal of the Oklahoma House is a true and correct copy of the wording of the proposed Sixteenth Amendment.

Eleven days later on the 21st, House Joint Resolution No. 5 was introduced by Rep. Wortman and Rep. Terral, and read the first time, although the full text is never completely recorded on the House journal. (HJ at 325)

The following bills were introduced and read first time:

* * *

House Joint Resolution No. 5, by Messrs. Wortman and Terral, relating to ratifying a proposed amendment to the Constitution of the United States providing for the laying and collecting of taxes on incomes.

On the 23rd, H. J. R. No. 5 was referred to the Committee on Criminal Jurisprudence (HJ at 340), not to the Committee on Constitutional Amendments. H. J. R. No. 5 was reported out of committee on the 25th with a favorable recommendation. (HJ at 392) H. J. R. No. 5, however, was now entitled—

A Resolution ratifying a proposed amendment to the Constitution of the United States providing for the levying and collecting of income

Note that this title proposes to give a power beyond tax collecting to "collecting of incomes."

On March the 3rd, a reference is made to H. J. R. No. 5, along with several other bills, by a report of the Committee of the Whole House with a recommendation that it pass. (HJ at 456) That same day, H. J. R. No. 5, without reading, was reported as having been correctly engrossed.

The next day, March 4th, H. J. R. No. 5 was read the third time, however, it was not recorded as having been read at length, a requirement of Article V, Section 34 of the Oklahoma State Constitution. Then, a vote was taken on its adoption, and it passed 89 to 2 in favor with 17 absent. The Speaker declared that H. J. R. No. 5 had passed and signed the bill in open session.

The previous day, Senator Graham had introduced Concurrent Resolution No. 23—

A Concurrent Resolution ratifying an amendment proposed by the Sixty-first Congress of the United States of America on the 15th day of March, 1909, to the Constitution of the United States and designated as Article I.

WHEREAS, The Sixty-first Congress of the United States of America at its first session, begun and held at the City of Washington, on Monday the 15th day of March, 1909, by joint resolution proposed an amendment to the Constitution of the United States, in words and figures as follows to-wit.:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each house concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which when ratified by the Legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

" 'Article 16. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the

several States, and without regard to any census or enumeration.' "

Now, Therefore, be it resolved by the Senate and House of Representatives of the State of Oklahoma, in extraordinary session assembled, such subject having been recommended by the Governor for consideration, that said proposed amendment to the constitution of the United States of America is hereby ratified.

The question being shall the resolution be adopted, the roll was called, the vote resulting as follows:

Yeas: . . . Total-32.

Nays: None. (SJ at 389) (See Appendix)

Although the Oklahoma Senate's Concurrent Resolution had the right format and the right wording and punctuation in the body of the amendment proper, the Senate decided to forego S. C. R. No. 23 and proceed with the House version, which arrived the next day—

A message was received from the House transmitting House Joint Resolution No. 5 . . . which was read the first time.

HOUSE JOINT RESOLUTION NO. 5—BY MESSRS. WORTMAN AND TERRAL OF THE HOUSE AND GRAHAM OF THE SENATE.

A Resolution ratifying a proposed amendment to the Constitution of the United States, providing for the levying and collecting of taxes on incomes. (SJ at 397)

On March 5th, H. J. R. No. 5, with a group of other bills, was read for the second time in the Senate and referred to the Committee on Legal Advisory. (SJ at 404) On the 9th, the Legal Advisory committee reported back to the Senate that H. J. R. No. 5 should pass, but "**as amended.**"

First: Amend the title to read as follows:

"A RESOLUTION RATIFYING AN AMENDMENT PROPOSED BY THE SIXTY-FIRST CONGRESS OF THE UNITED STATES OF AMERICA, ON THE FIFTEENTH DAY OF MARCHH (sic), ONE THOUSAND NINE HUNDRED AND NINE, TO THE CONSTITUTION OF THE UNITED STATES AND DESIGNATED AS ARTICLE SIXTEEN." (SJ at 463)

Though the title on H. J. R. No. 5, as read in the Senate journal, conveyed similar information as compared to the Senate's Concurrent Resolution, the Senate's Legal Advisory Committee apparently preferred the more descriptive title than that with which H. J. R. No. 5 had come to the floor of the Senate. Next, the committee proposed amending the enacting clause. (SJ at 464) It cannot be determined from the journal what was amended. The Legal Advisory Committee recommended that the second paragraph read as follows—

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled (two-thirds of each house concurring therein), that the following article is proposed as an amendment to the constitution of the United States, which when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution. (SJ at 464)

The version of the preamble of the Congressional Joint Resolution as transmitted by the Governor to the Legislature contained one change—the word "States" was changed to "states," however, the version of the preamble amended by the Senate contained six

changes from the Governor's transmittal—a comma is added after "America," a comma is deleted after the word "which," the word "That" and both instances of the word "Constitution" were changed to common nouns, and the colon after the second instance of the word "Constitution" was changed to a period.

The third paragraph of H. J. R. No. 5, as it had been composed and as it had passed the House, can be reconstructed from the Senate Legal Advisory Committee's proposed amendment.

> Amend the third paragraph by inserting after the word "derived" the following: "without apportionment among the several states." (SJ at 464)

According to this proposed amendment, the original proposed amendment wording of H. J. R. No. 5 was—

> ARTICLE 16: The Congress shall have power to lay on collect taxes on incomes, from whatever source derived, and from any census or enumeration.

In this version of the proposed Sixteenth Amendment the following changes are evident—

1. the Roman number "XVI" was changed to "16"
2. the phrase "without apportionment among the several states" was deleted
3. the meaning of the last phrase was completely reversed by exchanging the negative words "without regard to" for the positive word "from."
4. the opening phrase was rendered inoperative by changing the connective word "and" to the preposition, "on."

At this point, the Senate, having already adopted a completely correct version (S. C. R. No. 23) of the wording of the proposed Sixteenth Amendment, took up consideration of H. J. R. No. 5, which, even as amended, was still substantially different from what the Senate knew to be the correct wording from the Congressional Joint Resolution.

> On motion of Senator Thomas the report was adopted. House Joint Resolution No. 5 as amended by the Senate was read as follows . . .
>
> A RESOLUTION RATIFYING AN AMENDMENT PROPOSED BY THE SIXTY-FIRST CONGRESS OF THE UNITED STATES OF AMERICA, ON THE FIFTEENTH DAY OF MARCH, ONE THOUSAND NINE HUNDRED AND NINE, TO THE CONSTITUTION OF THE UNITED STATES AND DESIGNATED AS ARTICLE SIXTEEN.
>
> BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE STATE OF OKLAHOMA.
>
> WHEREAS, the sixty-first Congress of the United States of America at its first session begun and held at the City of Washington, on Monday the fifteenth day of March, one thousand nine hundred and nine, by joint resolution proposed an amendment to the constitution of the United States, in words and figures as follows to-wit:
>
> "Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled (two-thirds of each house concurring therein) that the following article is proposed as an amendment to the constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution:—
>
> ARTICLE 16: The Congress shall have power to lay on collect taxes on incomes, from whatever source derived, without apportionment among the

several states, and from any census or enumeration.

Now, therefore, BE IT RESOLVED, by the House of Representatives and the Senate of the State of Oklahoma in extraordinary session assembled, such subject having been recommended by the Governor for consideration, that said proposed amendment to the Constitution of the United States of America is hereby ratified.

The question being shall the resolution pass as amended by the Senate, the roll was called, the vote resulting as follows:

Yeas: . . . Total 37.

Nays: None.

Absent: . . . Total-6.

The resolution having received a majority vote of all the members elected to and constituting the Senate, the President declared same passed, as amended, by the Senate. (SJ at 465) (See Appendix)

H. J. R. No. 5, as amended by the Senate, was then transmitted to the House for approval of the amendments. (SJ at 465)

On March 10th, the Senate amendments to H. J. R. No. 5 were read and passed by a margin of 91 to 0 in favor with 17 absent. (HJ at 541) H. J. R. No. 5 was then duly signed and read in the House (HJ at 547) and the Senate (SJ at 480).

The House of the State of Oklahoma made an error in constitutionally correct procedure by failing to read H. J. R. No. 5 at length prior to the vote on its final passage, a requirement of Article V, Section 34 of the Oklahoma State Constitution.

Of greater significance is the absolutely undeniable fact that the Senate, in spite of their complete and full knowledge of the precise wording of the proposed Sixteenth Amendment, both from the transmittal from the Governor of the correctly worded Congressional Joint Resolution and from their own adoption of S. C. R. No. 23, they purposefully adopted wording which had a substantially different meaning than the official wording. This was a violation of the duty which the Oklahoma Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter in any way the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in precisely the proper place in the bill, with the spelling and punctuation exactly the same as it was adopted by the House. Obviously, it is extremely important that the Senate receive a copy of the bill in the precise form in which it passed the House. The preparation of such a

copy is the function of the enrolling clerk. (at 34) (emphasis added)

When the bill has been agreed to in *identical form* by both bodies—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.

The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed amendment to the Supreme Law of the land.

The Solicitor lists only the change of the word "from" to "without regard to" (memorandum at 7), however, the version received by Washington, D. C. was not the version which, according to the Oklahoma Senate journal, was adopted as amended from the House version by the Senate and, later, approved, as amended, by the House. The Solicitor refers to these intentional modifications as "errors." But, why? The Solicitor told the Secretary of State, Philander Knox, why these modifications had to be errors (memorandum at 15)—

> It . . . seems a necessary presumption, in the absence of an express stipulation to the contrary, that a legislature did not intend to do something that it had not the power to do, but rather that it intended to do something that it had the power to do, namely . . . to ratify the amendment proposed by Congress.

In other words, the Solicitor suggests that such modifications had to be "errors" because the State Legislatures did not have the power to ratify something which Congress had not proposed, but had only the power to concur in that which Congress did propose in its exact form and meaning. In this, the Solicitor guesses that for all cases, any "mere change of wording" was "probably inadvertent . . ." As has been amply shown, the Legislature of the State of Oklahoma made no "mere change of wording," nor did they do it inadvertently. Having full knowledge of the precise wording proposed by Congress, the Senate having passed such wording, they changed their minds and purposefully decided not to concur in that wording nor did they ratify it.

The version of H. J. R. No. 5 which was sent to Washington read as follows—

> HOUSE JOINT RESOLUTION NO. 5.
>
> A RESOLUTION RATIFYING AN AMENDMENT PROPOSED BY THE SIXTY-FIRST CONGRESS OF THE UNITED STATES OF AMERICA, ON THE FIFTEENTH DAY OF MARCH, ONE THOUSAND NINE HUNDRED AND NINE, TO THE CONSTITUTION OF THE UNITED STATES AND DESIGNATED AS ARTICLE SIXTEEN.
>
> BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE STATE OF OKLAHOMA.
>
> WHEREAS; the Sixty-first Congress of the United States of America at its first session begun and held at the City of Washington, on Monday the fifteenth day of March, one thousand nine hundred and nine, by joint resolution proposed an amendment to the constitution of the United States, in words and figures as follows to-wit:

> Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled two-thirds of each house concurring therein, that the following article is proposed as an amendment to the constitution of the United States, which, when ratified by the Legislatures, of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution:—
>
> ARTICLE 16: The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and from any census or enumeration.
>
> Now Therefore, Be it Resolved by the House of Representatives and Senate of the State of Oklahoma in extraordinary session assembled, such subject having been recommended by the Governor for consideration, that said proposed amendment to the constitution of the United States of America is hereby ratified.

This copy of H. J. R. No. 5 was not signed and for a very good reason—the Legislature did not pass that version.

Thus, the claimed ratification of the State of Oklahoma was invalid due to the following violations—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that H. J. R. No. 5 as passed by the Oklahoma Legislature contained the following changes—

a. the Roman numeral "XVI" was changed to "16"

b. the meaning of the last phrase was completely reversed by changing the negative phrase "without regard to" for the positive word "from"

c. the opening phrase was rendered inoperative by changing the connective "and" to the preposition, "on"

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

3. Failure to send a copy of the true resolution as passed

4. Violation of Article V, Section 34 of the Oklahoma State Constitution in a failure to read H. J. R. No. 5 at length just prior to its final passage

Maryland—April 8th, 1910

Austin L. Crothers, Governor of the State of Maryland, delivered his address to the January Session of the Legislature of Maryland of 1910. In his remarks, he included this comment on the proposed Sixteenth Amendment—

> INCOME TAX.
>
> I approve and endorse the principle of an Income Tax. It is a policy supported by the Democratic party and rests upon sound considerations of political economy and right. As indicated hereafter, however, I am of the opinion that this policy should be adopted as a State policy and a reasonable tax upon incomes and upon direct inheritances should be laid by the State government. The Federal government, exercising powers which have been challenged by many distinguished American citizens from the days of Thomas Jefferson to present time, has laid prohibitive tariff duties at rates so high as to seriously impair the Federal revenues. I cannot but regard the proposal upon the part of the Federal government to raise additional revenues by means of a Federal Income Tax, as an expedient upon its part to enable it to maintain its present unjust and extortionate tariff system. In the maintenance of that iniquity I am unwilling to unite. The great masses of the American people, including the people of Maryland, are demanding relief from the oppression of the present Federal tariff, and steps should be taken to enforce a revision of existing tariff rates **downward** rather than to enable them to be maintained and perpetuated. (emphasis in original)
>
> Moreover, the power of imposing taxes upon inheritances and incomes is clearly reserved to the States and within the scope of State authority. In my judgment, it should be exercised by the States and not delegated to the General Government. And in addition to this, considerations of revenue and economy upon the part of this State, especially in view of the works of internal improvement upon which they have embarked, certainly justify the retention by the State itself of this important source of revenue. (SJ at 36)

In Governor Crothers' opinion, the power of taxation sought by federal legislators through the proposed amendment was properly the province of the States alone and should be left that way. Nevertheless, the Governor performed his duty. The Governor's certified copy of the Congressional Joint Resolution was transmitted to the House, on January 26th, and to the Senate, on January 27th. In the House, it was read and referred to the Committee on Judiciary. (HJ at 108) In the Senate, it was read and referred to the Committee on Federal Relations. (SJ at 189)

On March 7th, the following resolution was introduced in the House—

> House Joint Resolution, No. __, ratifying an amendment to the Constitution of the United States of America.
>
> Which was read the first time and referred to the Committee on Judiciary. (HJ

at 551)

On the 15th, H. J. R. No. 2 was favorably reported out of committee and read in full—

The Chair laid before the House the Special Order of the day,
Being,

HOUSE JOINT RESOLUTION NO. 2.

Of the House of Delegates and the Senate of Maryland, ratifying the amendment to the Constitution of the United States of America proposed by Congress to the Legislature of the several States.

Whereas, It is provided by the fifth Article of the Constitution of the United States of America that Congress whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of said Constitution when ratified by the Legislature of three fourths of the several States or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by the Congress; and

Whereas, By the sixty-first Congress of the United States of America at the first session thereof begun and held at the city of Washington, on Monday, the fifteenth day of March, in the year one thousand nine hundred and nine, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of said Legislatures shall be valid to all intents and purposes as a part of said Constitution, namely:

Article 16. The Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States, without regard to any census or enumeration.

Be it Resolved by the General Assembly of Maryland, That the aforesaid amendment be and the same is hereby ratified and confirmed.

Which favorable report by the majority of the Judiciary Committee was adopted by yeas and nays as follows:—

AFFIRMATIVE.

* * *

Total-88.

NEGATIVE.

* * *

(Total-2.)

(HJ at 740) (See Appendix)

On the 21st of March, H. J. R. No. 2 came up for its third reading, which was in full, and was also taken up for a vote on final passage—

BILLS-THIRD READING.

Being,

HOUSE JOINT RESOLUTION NO. 2.

Of the House of Delegates and the Senate of Maryland, ratifying the amendment to the Constitution of the United States of America proposed by Congress to the Legislature of the several States.

Whereas, It is provided by the fifth Article of the Constitution of the United

States of America that Congress whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of said Constitution when ratified by the Legislature of three fourths of the several States or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by the Congress; and

Whereas, By the sixty-first Congress of the United States of America at the first session thereof begun and held at the city of Washington, on Monday, the fifteenth day of March, in the year one thousand nine hundred and nine, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of said Legislatures shall be valid to all intents and purposes as a part of said Constitution, namely:

Article 16. The Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States, without regard to any census or enumeration.

Be it Resolved by the General Assembly of Maryland, That the aforesaid amendment be and the same is hereby ratified and confirmed.

Which was read the third time and passed by yeas and nays as follows:

AFFIRMATIVE.

* * *

Total-83.

NEGATIVE.

* * *

Total-1.

Said resolution was then sent to the Senate. (HJ at 955)

H. J. R. No. 2 was introduced into the Senate on March 24th, being read in full—

HOUSE JOINT RESOLUTION NO. 2.

Of the House of Delegates and the Senate of Maryland, ratifying the amendment to the Constitution of the United States of America proposed by Congress to the Legislature of the several States.

Whereas, It is provided by the fifth Article of the Constitution of the United States of America that Congress whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of said Constitution when ratified by the Legislature of three fourths of the several States or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by the Congress; and

Whereas, By the sixty-first Congress of the United States of America at the first session thereof begun and held at the city of Washington, on Monday, the fifteenth day of March, in the year one thousand nine hundred and nine, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by

three-fourths of said Legislatures shall be valid to all intents and purposes as a part of said Constitution, namely:

Article 16. The Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States, without regard to any census or enumeration.

Be it Resolved by the General Assembly of Maryland, That the aforesaid amendment be and the same is hereby ratified and confirmed.

Endorsed: "Read the third time and passed by yeas and nays."

Which was read the first time and referred to the Committee on Federal Relations. (SJ at 1087)

On the 30th, H. J. R. No. 2 was reported out of committee, and was read in full—

HOUSE JOINT RESOLUTION NO. 2.

Of the House of Delegates and the Senate of Maryland, ratifying the amendment to the Constitution of the United States of America proposed by Congress to the Legislature of the several States.

Whereas, It is provided by the fifth Article of the Constitution of the United States of America that Congress whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of said Constitution when ratified by the Legislature of three fourths of the several States or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by the Congress; and

Whereas, By the sixty-first Congress of the United States of America at the first session thereof begun and held at the city of Washington, on Monday, the fifteenth day of March, in the year one thousand nine hundred and nine, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of said Legislatures shall be valid to all intents and purposes as a part of said Constitution, namely:

Article 16. The Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States, without regard to any census or enumeration.

Be it Resolved by the General Assembly of Maryland, That the aforesaid amendment be and the same is hereby ratified and confirmed.

Unfavorable report by Senators Coady, Moore and Beasman.

Minority report by Senators Campbell and Mathias.

Whereupon,

Mr. Campbell moved,

That the resolution be substituted for the unfavorable report.

And that the consideration of that motion be made the order of the day for March 30, 1910, at 8 o'clock P. M.

Which motion prevailed. (SJ at 1461)

The journal shows that a motion to substitute H. J. R. No. 2 for the unfavorable report "prevailed" on the 30th of March, however, on the 31st of March, H. J. R. No. 2 was read in full again upon being taken up for another vote on the motion for substitution—

The President laid before the Senate the special order:
Being,

HOUSE JOINT RESOLUTION NO. 2.

Of the House of Delegates and the Senate of Maryland, ratifying the amendment to the Constitution of the United States of America proposed by Congress to the Legislature of the several States.

Whereas, It is provided by the fifth Article of the Constitution of the United States of America that Congress whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of said Constitution when ratified by the Legislature of three fourths of the several States or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by the Congress; and

Whereas, By the sixty-first Congress of the United States of America at the first session thereof begun and held at the city of Washington, on Monday, the fifteenth day of March, in the year one thousand nine hundred and nine, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of said Legislatures shall be valid to all intents and purposes as a part of said Constitution, namely:

Article 16. The Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States, without regard to any census or enumeration.

Be it Resolved by the General Assembly of Maryland, That the aforesaid amendment be and the same is hereby ratified and confirmed.

The question being on the motion of Mr. Campbell to substitute the Resolution for the unfavorable report of the Committee.

Which motion prevailed by yeas and nays as follows:

AFFIRMATIVE.

* * *

Total-15.

NEGATIVE.

* * *

Total-11.

And Resolution read the second time. (SJ at 1575)

On the 4th of April, H. J. R. No. 2 was read in full for the fourth time upon being taken up for a vote on final passage—

HOUSE JOINT RESOLUTION NO. 2.

Of the House of Delegates and the Senate of Maryland, ratifying the amendment to the Constitution of the United States of America proposed by Congress to the Legislature of the several States.

Whereas, It is provided by the fifth Article of the Constitution of the United States of America that Congress whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of said Constitution when ratified by the Legisla-

ture of three fourths of the several States or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by the Congress; and

Whereas, By the sixty-first Congress of the United States of America at the first session thereof begun and held at the city of Washington, on Monday, the fifteenth day of March, in the year one thousand nine hundred and nine, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of said Legislatures shall be valid to all intents and purposes as a part of said Constitution, namely:

Article 16. The Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States, without regard to any census or enumeration.

Be it Resolved by the General Assembly of Maryland, That the aforesaid amendment be and the same is hereby ratified and confirmed.

Which was read the third time and passed by yeas and nays as follows:

AFFIRMATIVE.

* * *

Total-16.

NEGATIVE.

* * *

Total-9.

Said resolution was then returned to the House of Delegates. (SJ at 2096)

The Constitution of the State of Maryland provides that the majority in any vote must be calculated according to the whole number of the members elected to each house (see Article III, Section 28). The number of Senators elected to the 1910 Session of the Legislature of Maryland was 27. The vote in the Senate on H. J. R. No. 2 was deficient in that only 59% of all the Senators elected voted in the affirmative. This figure is even below that required for a vote on a State Constitutional amendment in Maryland (Article XIV, Section 1).

On April 4th, H. J. R. No. 2 was read in full for the seventh time in the Maryland Legislature, upon its return from the Senate—

HOUSE JOINT RESOLUTION NO. 2.

Of the House of Delegates and the Senate of Maryland, ratifying the amendment to the Constitution of the United States of America proposed by Congress to the Legislature of the several States.

Whereas, It is provided by the fifth Article of the Constitution of the United States of America that Congress whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of said Constitution when ratified by the Legislature of three fourths of the several States or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by the Congress; and

Whereas, By the sixty-first Congress of the United States of America at the first session thereof begun and held at the city of Washington, on Monday, the fifteenth day of March, in the year one thousand nine hundred and nine, it was

resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of said Legislatures shall be valid to all intents and purposes as a part of said Constitution, namely:

Article 16. The Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States, without regard to any census or enumeration.

Be it Resolved by the General Assembly of Maryland, That the aforesaid amendment be and the same is hereby ratified and confirmed.

Endorsed: "Read the third time and passed by yeas and nays." (HJ at 2349)

It is not recorded in either journal whether H. J. R. No. 2 was ever engrossed for either of the third readings in the House or the Senate. Such a failure would have been a violation of Article III, Section 27 of the Maryland State Constitution which provided that—

> . . . no bill shall be read a third time until it shall have been actually engrossed for a third reading.

On June 22nd, 1910, N. Winslow Williams, the Secretary of State of Maryland, sent a letter of transmittal to Philander Knox which stated—

> I have the honor to transmit herewith certified copy of Joint Resolution No. 8, of the General Assembly of Maryland, passed at its January Session 1910, relating to and ratifying an amendment to the Constitution of the United States, in the matter of the taxation of incomes.

Enclosed with that letter was a copy of Joint Resolution No. 8, which was not signed except by the Clerk of the Court of Appeals of Maryland. That resolution read—

Joint Resolution
January Session 1910.
Chapter 8.
A Joint Resolution

Of the House of Delegates and Senate of Maryland ratifying an amendment to the Constitution of the United States of America proposed by Congress to the legislatures of the Several States.

Whereas, it is provided by the fifth Article of the Constitution of the United States of America, that Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a Convention for proposing amendments, which in either case, shall be valid to all intents and purposes as part of the said Constitution when ratified by the Legislatures of three fourths of the several States or by Conventions in three-fourths thereof, as the one or other mode of ratification may be proposed by the Congress; and whereas, by the sixty-first Congress of the United States of America at the first session thereof, begun and held at the City of Washington on Monday the fifteenth day of March, in the year one thousand nine hundred and nine, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of the said Legislatures shall be valid to all intents and

purposes, as a part of the said Constitution, namely;

Article 16. The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Be it resolved by the General Assembly of Maryland, that the aforesaid amendment be and the same is hereby ratified and confirmed.

Approved; Apr 8-1910

Adam Peeples

Speaker of the House of Delegates.

A. P. Gorman, Jr.,

President of the Senate.

STATE OF MARYLAND, Sct,:

I, Caleb C. Magruder, Clerk of the Court of Appeals of Maryland, do hereby certify, that the foregoing is a full and true copy of A Joint Resolution of the General Assembly of Maryland of which it purports to be a copy, as taken from the Original Joint Resolution belonging to and deposited in the Offcie of the Clerk of the Court of Appeals aforesaid.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the said Court of Appeals, this 21st. day of June, 1910.

(Seal)

(Signed)

Clerk Court of Appeals of Maryland. (See Appendix)

The preceding text is also that recorded in the publication of the Maryland session laws, under the classification of Public General Laws. Joint Resolution No. 8 contained the following changes from the official Congressional Joint Resolution—

1. the preamble was modified
2. the Roman numeral "XVI" was changed to "16"
3. the comma following the word "incomes" was deleted

Such changes are not permitted in the ratification of an amendment. Joint Resolution No. 8 was in violation of the duty of the Maryland Legislature to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House.** The preparation of such a

copy is the function of the enrolling clerk. (at 34) (emphasis added)

When the bill has been agreed to in *identical form* by both bodies—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.

The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

Of equal significance was the fact that Joint Resolution No. 8 was not the same resolution as House Joint Resolution No. 2 which had been read seven times in exactly the same way in the Maryland journals and which is the only ratification resolution upon which the House and Senate voted as recorded in those journals. The following discrepancies are evident in Joint Resolution No. 8 compared to any of the full readings of House Joint Resolution No. 2, all fully set forth in the journals—

1. the word "the" before the first instance of the word "Senate" was deleted
2. the word "the" preceding the first instance of the word "amendment" was changed to the word "an"
3. the first instance of the word "Legislature" was changed to "legislature"
4. the first instance of the word "several" was changed to "Several"
5. the word "It" following the first instance of the word "Whereas" was changed to "it"
6. a comma is inserted following the second instance of the word "America"
7. a comma is inserted following the second instance of the word "Congress"
8. the word "convention" is changed to a proper noun
9. a comma is inserted following the word "case"
10. the word "the" was inserted before the phrase "said Constitution"
11. the second instance of the word "Legislature" was changed to "Legislatures"
12. the word "conventions" was changed to "Conventions"
13. a comma was inserted following the first instance of the word "thereof"
14. the word "the" preceding the word "mode" was deleted
15. the second and third paragraphs are joined into one
16. the second instance of the word "Whereas" was changed to "whereas"
17. the word "By" following the second instance of the word "Whereas" was changed to "by"
18. the word "session" was changed to a proper noun
19. a comma was inserted following the second instance of the word "thereof"
20. the word "city" was changed to a proper noun
21. the comma following the word "Washington" was deleted
22. the comma following the word "Monday" was deleted
23. the word "concurring" was changed to "concuring"
24. the word "the" was inserted preceding the phrase "said Legislatures"

25. the word "the" preceding the phrase "power to lay" was deleted

26. a comma was inserted following the word "derived"

27. the word "and" was inserted preceding the phrase "without regard to any census or enumeration."

28. the word "Resolved" was changed to "resolved"

29. the word "That" preceding the phrase "the aforesaid amendment" was changed to "that"

The memorandum of the Solicitor referenced above does not mention the changes listed in the foregoing numbers 25 to 27 because House Joint Resolution No. 2 was obviously amended to Joint Resolution No. 8 and No. 8 did not contain those changes. The Solicitor's memorandum only mentions an "(e)rror of punctuation." Had the Solicitor had a copy of House Joint Resolution No. 2 as set forth exactly the same way in the journals seven separate times, the ratification of Maryland would have received mention for two additional changes to the proposed amendment proper, namely, numbers 25 and 27, number 26 already having been covered under a punctuation "error."

Perhaps because the Governor made it clear in his message to the Legislature that he did not approve of the proposed amendment, H. J. R. No. 2, though classified as a bill in the journals, was never presented to the Governor following its passage in the Legislature as required under Article II, Section 17 and Article III, Section 30 of the Maryland State Constitution which provided that—

> Every bill, when passed by the General Assembly, and sealed with the Great Seal, shall be presented to the Governor, who, if he approves it, shall sign the same in the presence of the presiding officers and chief clerks of the Senate and House of Delegates. Every law shall be recorded in the office of the Court Appeals, and in due time be printed, published and certified under the Great Seal, to the several courts, in the same manner as has been heretofore usual in this State.

H. J. R. No. 2 was never sealed with the Great Seal, Joint Resolution No. 8 having taken its place on the way to "the office of the Court Appeals," and publication in Maryland's session laws.

The ratification of the proposed Sixteenth Amendment of the State of Maryland was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that the true text of H. J. R. No. 2, which was the only resolution to pass the Maryland Legislature, contained the following changes to the official Congressional Joint Resolution—

a. the preamble was modified

b. the Roman numeral "XVI" was changed to "16"

c. the word "the" was inserted preceding the word "power"

d. the comma following the word "incomes" was deleted

e. the comma following the word "derived" was deleted

f. the word "and" preceding the phrase "without regard" was deleted

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878 in that Joint Resolution No. 8 was not signed,

but more significantly was not even the same resolution as that which passed the Maryland Legislature

3. Violation of Article III, Section 27 of the Maryland State Constitution in the failure of either house to engross H. J. R. No. 2 for its third reading

4. Violation of Article II, Section 17 and Article III, Section 30 of the Maryland State Constitution in that H. J. R. No. 2 was not presented to the Governor for his approval.

5. Violation of Article III, Section 30 of the Maryland State Constitution in that H. J. R. No. 2 was not printed, published and certified under the Great Seal, to the several courts.

Georgia—August 3rd, 1910

On the 29th of July, 1909, Governor Joseph M. Brown of the State of Georgia sent the following communication to the General Assembly of the State of Georgia—

> I have the honor to transmit to you for such consideration as your wisdom may direct a copy of a Resolution of Congress entitled: "Joint Resolution Proposing an Amendment to the Constitution of the United States," the same being certified as correct by Honorable P. C. Knox, Secretary of State.

On August 3rd, the following resolution was read for the first time in the Georgia Senate, by Senator Gordy—

> A resolution. Resolved, That Congress shall have power to levy and collect taxes on incomes from whatever source desired without apportionment among the several States.
>
> Resolved further, That said amendment be and the same is hereby ratified by the General Assembly of Georgia. (SJ at 621)

Although the Governor had transmitted the official version of the Congressional Joint Resolution only five days previous., Senator Gordy added the word "Resolved" and an accompanying comma to the beginning of the proposed wording of the amendment, changed the first instance of "The" to "That," the word "lay" to "levy," and the word "derived" to "desired," and completely omitted the entire phrase "and without regard to any census or enumeration." The Congressional preamble and the designation "Article XVI." were discarded as well. This resolution was then referred to the Committee on General Judiciary.

Immediately following Gordy's effort, Senator Jackson introduced another version, even more inaccurate—

> A resolution authorizing Congress to levy and collect income tax from whatever source desire without apportionment among the several States. (SJ at 621)

The next day, Senator Perry indicated that he thought that Senator Jackson's resolution should be removed from consideration by committee—

> Mr. Perry gave notice that at the proper time he would move to reconsider the action of the Senate in referring the Jackson resolution relative to tax on incomes to the General Judiciary Committee. (SJ at 623)

The next week, on the 11th, Messrs. Jackson and Gordy brought up and read for the third time a resolution reading simply "A resolution to ratify the 16th amendment to the

Constitution of the United States." (SJ at 972) Senator Burwell's motion to table the resolution prevailed by a vote of 18 to 17.

* * *

Nearly a year passed before Senator Jackson made another attempt, in the next regular session, to get the proposed Sixteenth Amendment ratified in Georgia. On July 6th, 1910—

> The following special order was taken up, which is as follows:
> By Mr. Jackson—
> A Resolution. **Resolved**, That Congress shall have power to levy and collect taxes on incomes from whatever source derived without apportionment among the several States of the Union. (SJ at 260)

There is no indication of referral to committee, of printing, or of any reading in the Senate journal for 1910 of this resolution. The ending phrase—"among the several States of the Union"—is imaginative but not Congressional. Furthermore, the word "The" was still replaced by "That," "lay" was still replaced by "levy," all of the commas were still missing and the entire ending phrase "without regard to census or enumeration" was still missing. A successful motion for adjournment ended this day's business before consideration of Mr. Jackson's resolution.

On Thursday the 7th, Senator Jackson again tried to have the same resolution taken up and this time Senator Longley moved to table the resolution, but the motion was lost. Senator Irwin moved that the Senate adjourn, and that motion was lost. But they adjourned until Friday anyway. (SJ at 265)

The Senate journal shows that the day after Thursday, July 7th, 1910 was Thursday, July 7th, 1910, but it apparently is actually referencing the Senate's business as of Friday, July 8th, 1910. On the next day, Senator Jackson brought up the same resolution—

> A Resolution. **Resolved**, That Congress shall have power to levy and collect taxes on incomes from whatever source derived without apportionment among the several States of the Union. (SJ at 271)

Once again, consideration was postponed—this time until Monday, the 11th. (SJ at 271) That Monday, Senator Jackson introduced another version of his resolution—

> A Resolution. **Resolved**, That Congress shall have power to levy and collect taxes on incomes from whatever source derived without apportionment to the State. (SJ at 281)

Whether or not Senator Jackson was attempting to exempt Georgia specifically in his reference to "the State" in this resolution is not clear.

Also unclear is how, and/or whether, Senator Jackson's resolution came to be designated Senate Resolution No. 23, which is entitled, "A Resolution. Proposing to ratify an amendment to the Constitution of the United States." That resolution, as entitled in the archival copy, never appeared in the journal, was never claimed in the journal as having been printed, was never claimed as having been referred to committee in the journal and was not read more than once during the regular session of 1910 according to the accounting included with this document in the archival record. (archival copy of SR No. 23) The archival copy of S. R. No. 23 shows a "38" stamped on

one edge of the legislative history, however, "23" is its hand-written designation and is consistent with the other hand-written text on the document. From the archives, S. R. 23 (38) reads as follows—

> Whereas, The Congress of the United States, has under the fifth article of the Constitution of the United States proposed an amendment to said Constitution, as article 16, in the words following, to wit:
>
> The Congress shall have power to levy and collect taxes on income from whatever sources derived without apportionment among the several States, and without regard to any census or enumeration, which amendment was approved on the day of July 1909.
>
> Therefore, Be it resolved by the Senate, and the House of Representatives of the State of Georgia, in General Assembly met, That the said amendment of the Constitution of the United States, be and the same is hereby ratified and adopted.
>
> BE IT FURTHER RESOLVED, That a certified copy of the foregoing preamble and resolution be forwarded by his Excellency, the Governor to the President of the United States, and also to the Secretary of State of the United States.

The above is approximately the same text received in Washington, D. C. as "INCOME TAX, AMENDMENT TO CONSTITUTION UNITED STATES AUTHORIZED, RATIFIED. No. 38. A Resolution." (sic) The archival copy of S. R. No. 23 (38) records the following—

In Senate,
Read 1st Time. Aug 3, 1909.
Read 2nd Time. July 11, 1910.
and adopted, Ayes 23, Nays 18.

(signed)
"Secretary of Senate.

In House.
Read 1st Time. July 13, 1910.
Read 2nd Time. July 26, 1910.
and adopted, Ayes 129, Nays 32.

(signed)
Clerk House of Representatives.

The first recorded reading of this version of S. R. No. 23 is on August 3rd, 1909 in the previous session of the Legislature. Neither of the resolutions related to the proposed Sixteenth Amendment introduced on that day were entitled, "A Resolution. Proposing to ratify an amendment to the Constitution of the United States." The resolution entitled, "A Resolution to ratify the 16th Amendment to the Constitution of the United States," introduced on August 3rd, 1909 by Senator Gordy and substituted for by Senator Burwell was designated S. R. No. 23. That resolution, however, was tabled and not taken up again. (archival copy) A resolution, designated S. R. No. 23, with a similar title as that which was transmitted to Washington, "A Resolution proposing to ratify an amendment to Consti. (sic) U. S.," was adopted only by the Senate according to the archival copy of that resolution.

The preceding legislative history is, thus, fraudulent in several ways—one, a universal doctrine of legislation is that proposed bills and resolutions from previous sessions must be reintroduced and any previous action must be repeated and may not be relied upon for the current session; two, the archival documents show that the S. R. No. 23 of

the 1909 session of the Georgia Legislature was not taken up again, so that the legislative history shown above for S. R. No. 23 cannot be accurate, nor could the legislators have mistaken its inaccuracy; three, the archival documents show that the S. R. No. 23 adopted in the 1910 session on July 11th, 1910 was adopted only by the Senate.

Regardless of the source of "No. 38," it was an improperly composed resolution compared to the official Congressional Joint Resolution, which contained the following text—

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),* That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:
>
> "ARTICLE XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

Besides the absence of the proper preamble in S. R. No. 23, the word "levy" was still substituted for the word "lay," the commas binding "from whatever source derived" were missing, and the word "source" was made plural while the word "incomes" was made singular, and the phrase—"which amendment was approved on the day of July 1909" was appended on the end but within the quotation marks delineating the proposed amendment, all of which were violations of the legislative duty which the Legislature of the State of Georgia had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determiniation of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. The standard of compliance with which the states are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since**

it must reflect ***precisely*** **the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment exactly as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must concur precisely and exactly with Congress in a proposed Constitutional amendment.

It is not clear, however, upon what the Georgia Senate voted. The following took place upon Mr. Jackson's introduction of the last in his series of different resolutions, on the 11th of July—

> A Resolution. **Resolved**, That Congress shall have power to levy and collect taxes on incomes from whatever source derived without apportionment to the State.
>
> Mr. Burwell moved the previous question on this resolution; the motion prevailed, and the main question ordered.

The problem with Senator Burwell's motion was that there was no previous question on this new resolution. It was a legislative nonsequitur. Nevertheless, a vote was taken and the result was "Ayes, 22; Nays, 18."—

> The President voted aye, making 23.
>
> The resolution having recieved the requisite Constitutional majority, was passed. (SJ at 281)

Two other problems are evident in this vote. First, the President of the Georgia Senate is not allowed to vote unless there is a tie. (Rules of the Senate, Rule 2) The vote was, therefore, 22 to 18, not 23 to 18. Either way, a Constitutional majority for the ratification of amendments to the Constitution in Georgia required a two-thirds majority. Senate Resolution No. 23 received only 56.1% in the latter instance, 55% in the former.

Second, S. R. No. 23 (38) was never read more than twice at any time in violation of Article 3, Section 7 of the Georgia State Constitution which provided for a reading of bills on three separate days.

The Georgia House of Representatives entertained their own resolution on July 6, 1910, reading it for the second time (the first in this series is unrecorded)—

> The following resolution which was made the special order for this time was read the **second** time and put upon its passage, to-wit:
>
> By Mr. Slade of Muscogee—
>
> A resolution providing for the ratification by the State of Georgia of the proposed amendment to Article 16 of the United States Constitution. (HJ at 301)

The intent of the above resolution apparently was to amend Article 16. Nothing was done on this resolution, however, and two days later, Representative Slade introduced another resolution which proposed merely to ratify a proposed amendment—

> The following resolution which was brought over as unfinished business was again taken up for passage, to-wit:
>
> By Mr. Slade of Muscogee—
>
> A resolution providing for the ratification by the State of Georgia of the proposed amendment to the Constitution of the United States, known as Article

16, so as to provide for a tax on incomes. (HJ at 341)

The House adjourned before consideration of this resolution. On the 12th of July, the Senate sent the following message to the House—

> The Senate has adopted by a requisite Constitutional majority the following resolution of the Senate, to-wit:
> A resolution proposing to ratify an amendment to the Constitution of the United States providing for the levy and collection of an income tax. (HJ at 381)

The resolution transmitted to the House came with a completely different title than any which had been introduced in the Senate. That title, however, was similar to that which appears in the archives on the bogus S. R. No. 23 (38).

One member of the House, Representative P. T. McCutchen, was so anxious that he wanted to vote in absentia by telegram. The Speaker of the House decided that allowing such a thing would be unwise and might result in difficulties in maintaining a quorum in the Legislature. Mr. Slade then introduced a resolution entitled—

> A resolution providing for the ratification of an amendment to the United States Constitution providing for an income tax.

Exactly what happened next in the Georgia House is somewhat questionable—

> Mr. Edwards, of Walton, moved that the previous question be ordered at 10:30 o'clock this morning.
> Mr. Fullbright, of Burke, moved as a substitute that the previous question be ordered at 11:30 a.m., which was adopted.
> The motion of Mr. Edwards was then adopted by substitute.
> Mr. Johnson, of Bartow, asked the unanimous consent of the House to be recorded as voting aye on the passage of the above resolution when the same should come to a vote as at that time he would be compelled to be absent from the hall, which was granted.
> By unanimous consent the time for the call of the previous question was extended for the purpose of allowing Mr. Ellis, of Bibb, to conclude his remarks.
> The previous question was then called.
> The original resolution was read the third time.
> The substitute offered by Mr. Alexander, of De Kalb was read and adopted.
> On passage of the resolution by substitute Mr. Hall, of Bibb, called for the ayes and nays which call was sustained . . . (HJ at 381)

The roll call showed a vote of 125 in favor to 44 against. It is not clear what was approved 125 to 44. It was not S. R. No. 23 (38) or anything else from the Senate. Even had it been the resolution from the Senate, it would not have mattered because a substitute was adopted instead. The "previous question," however, did not consist of consideration of the Senate resolution.

Two weeks later, Rep. Jackson took the following action—

> The following special orders were read the third time and put upon their passage, to-wit:
> By Mr. Jackson, of 21st District—
> A resolution proposing to ratify an amendment to the Constitution of the United States, relative to an income tax.
> Mr. Vinson, of Baldwin, proposed a substitute which was lost.

A vote was then taken on the named resolution and the result was Ayes—129, Nays—32. (HJ at 734) Which resolution was voted upon in this instance? This resolution was on its third reading. The archival copy of S. R. No. 23 (38) claims that S. R. No. 23 (38) was only on its second reading on this date. This resolution, thus, could not have been S. R. No. 23 (38).

Although the House never actually took a vote upon S. R. No. 23 (38), the purported history on S. R. No. 23 (38) falsely records two readings, which is not even the Constitutionally required three readings on separate days.

Federal statutes required that each State which ratified an amendment to the Constitution of the United States transmit a certified copy of the resolution of ratification to the Secretary of State of the United States. Joseph M. Brown, the Governor of Georgia did not transmit, and, indeed, could not have validly transmitted Senate Resolution No. 23 to Philander Knox, the Secretary of State of the United States. Brown transmitted an unsigned copy of a document entitled "INCOME TAX, AMENDMENT TO CONSTITUTION UNITED STATES AUTHORIZING,RATIFIED. No. 38. A Resolution," which was not sent until February 18, 1911, seven months after its supposed passage in the Georgia Legislature.

The State of Georgia did not ratify the proposed Sixteenth Amendment, in that the following fatal violations occurred during its course through the Georgia Legislature-

1. The Georgia Senate did not, in fact, pass S. R. No. 23 nor S. R. No. 23 (38), however, the latter fails in any event to concur in United States Senate Joint Resolution No. 40 as passed by Congress in the following respects—

a. the preamble was modified from the original

b. the word "levy" was substituted for the word "lay"

c. the commas binding "from whatever source derived" were missing

d. the word "source" was changed to "sources"

e. the word "incomes" wash changed to "income"

f. the phrase—"which amendment was approved on the day of July 1909" was appended on the end and within the quotation marks delineating Georgia's proposed amendment

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

3. The resolution indicated as passed in the Senate was only read once during its proper session, was not read more than twice, in any case, in violation of Article 3, Section 7 of the Georgia State Constitution

4. The Senate did not pass their resolution with the required two-thirds majority.

5. The resolution which the Georgia House received from the Senate was not the same one which the Georgia Senate passed.

6. The Georgia House ratified a resolution which suffered from different, but similar, problems in wording deficiencies as did the Senate's version.

7. S. R. No. 23 (38) was indicated as having been read only twice in violation of Article 3, Section 7 of the Georgia State Constitution

8. The original S. R. No. 23 was tabled and not taken up again

9. The S. R. No. 23 adopted by the Senate was not adopted by the House

10. S. R. No. 23 (38) is pieced together from the actions taken on several different

resolutions

Perhaps with a certain amount of embarrassment over the fiasco perpetrated in the legislative sessions of 1909 and 1910, the process was stated all over again on July 2nd, 1912, but never finished.

> The following communication was received from the Governor:
>
> * * *
>
> I have the honor to herewith to transmit to you for your consideration the accompanying copy of a joint resolution of the Congress of the United States submitting to the Legislatures of of the States a proposed amendment to the Constitution of the United States, the same being transmitted as certified to this office by the Honorable the Secretary of State of the United States and as now of file in the Executive Department.
>
> Respectfully submitted,
> Joseph M. Brown,
> Governor.
>
> The communication was read and referred to the Constitutional Amendments Committee. (HJ 165)

This transmittal letter is not the transmittal letter of July 29th, 1909. Nothing further was ever done with this letter. The Journal Index contains no other reference to consideration or vote on the proposed Sixteenth Amendment for the 1912 session.

Texas—August 17th, 1910

In July of 1910, T. M. Campbell, Governor of Texas, called the Third Special Session of the Thirty-first Legislature of the State of Texas. In his proclamation, the Governor did not present to the legislators the issue of the ratification of the proposed Sixteenth Amendment. However, on August 2nd, he finally presented that issue to the Legislature pursuant to Article III, Section 40 of the Texas State Constitution, requiring that the Governor present to the Legislature all subjects for consideration in any special session.

There had been great difficulty in securing a quorum to do business in that session because of the fact that the election primaries were being held at that point in time. It was reported, in the Texas newspapers, that those legislators who were closest to the Governor were among the first arrivals in Austin, the State Capitol, trying to organize the special session. There were also reports that the House attempted to take action on proposed legislation without the Senate having a quorum. On July 26th, a quorum was finally had in both houses.

One of the first issues presented to the legislators was the problem of the accusations of bribery which had been recently made concerning some of the legislation taken up by that Legislature in the previous session and in the gubernatorial race just ended. The result was the following amended resolution—

> Substitute for
> H. C. R. No. 1
>
> WHEREAS, there have been charges repeatedly made by men of high standing and responsibility and published broadcast in the newspapers throughout the State to the effect that (words crossed out) Legislation was influenced or prevented during the Re gular (sic) and former Called Session of this Legislature, by the use of money and other corrupt influences: and whereas certain other charges have been made to the effect that submission was defeated by corruption;
>
> AND WHEREAS, it has also been charged that favor-seeking interests used large sums of money and other corrupting agencies with said Legislature and in the campaign just closed for the purpose of influencing the result in the primary election held on Saturday, July 23d, 1910,
>
> AND WHEREAS, the good name of the Legislature and the integrity and the honor of our State demands that this called session of the Legislature give attention to these charges and that ample means be provided at once for a thorough and effective investigation to the end that if these charges are found groundless the stigma may be removed, and if true the guilty ones brought to justice and punished for their crime; and if the laws of the State are insufficient that suitable laws may be enacted to prevent the recurrence of such acts.
>
> THEREFORE BE IT RESOLVED, by the House of Representatives, the Senate concurring, that a committee of ten, six from the House and four from the

Sentate (sic), to be selected by the Speaker of the House and the President of the Senate, respectively, be appointed to investigate and ascertain the truth or falsity of these charges and any other charges as this Legislature, from time to time, by concurrent resolutions may give said committee to investigate. That said committee be, and the same is hereby created and enpowered and give n (sic) such authority as is provided in Chapter 7 of the Acts of the Thirtieth Legislature, providing for Investigating Committees.

This resolution would have given the Texas legislators the power to investigate themselves for corruption. This resolution, however, died in the Senate. (HJ at 33)

On August 2nd, Senate Joint Resolution No. 1, though not reported as having been referred to committee, was reported out of committee—

Sir: We, a majority of your Committee on Constitutional Amendments, to whom was referred

Senate Joint Resolution No. 1, To ratify the Sixteenth Amendment to the Constitution of the United States of America, relating to the power of Congress to levy a tax on incomes,

Have had the same under consideration, and beg leave to report the same back to the Senate with the recommendation that it do pass and **be not printed.** (SJ at 50) (emphasis added)

The next day, S. J. R. No. 1 was found correctly engrossed in its final draft. (SJ at 50) However, since it was not printed, the only text which the Texas legislators had been presented was that read to them on the previous day—"relating to the power of Congress to levy a tax on income."

On the 4th, S. J. R. No. 1 was taken up again—

The Chair laid before the Senate, on third reading, Senate Joint Resolution No. 1, Ratifying the Sixteenth Amendment to the Constitution of the United States of America. The resolution was read third time, and passed by the following vote:

Yeas-28.

* * *

Nays-1.

* * *

Absent.

* * *

Absent-Excused.

* * *

(SJ at 51)

After the vote in the Senate, a message was received by the House informing that body of the Senate's action. (HJ at 69) S. J. R. No. 1 was then read the first time and referred to the Committee on Constitutional Amendments. (HJ at 69)

On August 6th, the House ratification resolutions, introduced in the House on August 2nd, were sent to the Senate—

House Joint Resolution No. 1 (C. S. H. J. R. Nos. 1 and 2), Ratifying the Sixteenth Amendment to the Constitution of the United States of America. (SJ at 56)

That same day, H. J. R. Nos. 1 and 2 were referred to committee in the Senate. (SJ at 57)

On August 14th, the House took up S. J. R. No. 1 for consideration and decided not to print S. J. R. No. 1—

> On motion of Mr. Mason, it was ordered that Senate Joint Resolution No. 1, ratifying the income tax amendment to the Federal Constitution, **be not printed.** (HJ at 170) (emphasis added)

That same day, S. J. R. No. 1 was taken up for consideration again in the House with the following result—

> The Speaker laid before the House on second reading and passage to third reading,
> Senate Joint Resolution No. 1, Ratifying the Sixteenth Amendment to the Constitution of the United State of America.
> The resolution was read a second time, and was passed to third reading. (HJ at 171)

On the 15th, S. J. R. No. 1 was reported out of committee—

> Sir: Your Committee on Constitutional Amendments, to whom was referred Senate Joint Resolution No. 1, have had same under consideration, and we are instructed to report it back to the House, with a recommendation that it do pass." (HJ at 186)

Having not reported S. J. R. No. 1 out of committee until the 15th, though the resolution was considered several times prior, the House was in violation of Article III, Section 37 of the Texas State Constitution, which provides that—

> No bill shall be considered unless it has been first referred to a committee and reported thereon; . . .

On the 16th, S. J. R. No. 1 was taken up for a vote as follows—

> The Speaker laid before the House, on third reading and final passage,
> Senate Joint Resolution No. 1, Ratifying the Sixteenth Amendment to the Constitution of the United States of America.
> The resolution was read third time.
> Question-Shall the resolution be passed.
> The Clerk was directed to call the roll, and the resolution was passed by the following vote
>
> Yeas-106.
>
> * * *
>
> Nays-1.
>
> * * *
>
> (Absent-16.)
>
> * * *
>
> (Absent-Excused.-9) (HJ at 192)

In the Senate, on the 15th, the resolutions which had originated in the House were properly reported prior to any other consideration by the Senate—

> Sir: We, your Committee on Constitutional Amendments, to whom was

referred

Concurrent Senate and House Joint Resolutions Nos. 1 and 2, Ratifying the Sixteenth Amendment to the Constitution of the United States of America,

Have had same under consideration, and beg leave to report it back to the Senate, with the recommendation that it do pass, and **be not printed.** (SJ at 173) (emphasis added)

These resolutions, however, died on the calendar according to the index of the Senate journal.

On August 17th, S. J. R. No. 1 was duly signed in the House—

> The Speaker signed, in the presence of the House, after giving due notice thereof, and their captions had been read severally, the following bills:
>
> * * *
>
> Senate Joint Resolution No. 1, Senate Joint Resolution No. 1, Ratifying the Sixteenth Amendment to the Constitution of the United States of America. (HJ at 229)

There is no record of the signing of S. J. R. No. 1 in the Senate journal in violation of Article III, Section 38 of the Texas State Constitution—

> The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the Legislature, after their titles have been publicly read before signing; and the fact of signing shall be entered on the journals.

The absence of the record of such signing is evidence of the failure of the Senate to have the title of S. J. R. No. 1 publicly read prior to signing, another violation of the same Section.

In the official publication of the State of Texas, *GENERAL AND SPECIAL LAWS OF THE STATE OF TEXAS,* Passed by the Thirty-first Legislature at its Third Called Session, S. J. R. No. 1 is properly listed under General Laws according to the provisions of Article VIII, Section 3 of the Texas State Constitution which states that "Taxes shall be levied and collected by general laws and for public purposes only," as follows—

> RATIFYING PROPOSED SIXTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.
>
> S. J. R. No. 1.] SENATE JOINT RESOLUTION.
>
> Joint Resolution ratifying the Sixteenth Amendment to the Constitution of the United States of America.
>
> Whereas, both Houses of the Sixty-first Congress of the United States of America, at its first Session by a Constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to-wit:
>
> A Joint Resolution proposing an Amendment to the Constitution of the United States.
>
> Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following Article is proposed as an Amendment to the Constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution, namely,
>
> Article XVI. The congress shall have power to lay and collect taxes on

incomes, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration.

Therefore, be it resolved by the Senate and House of Representatives of the State of Texas, That the said proposed Amendment to the Constitution of the United States of America, be and the same is hereby ratified by the Legislature of the State of Texas.

That certified copies of this preamble and joint resolution be forwarded by the Governor of this State to the President of the United States, the Secretary of State of the United States, to the presiding officer of the United States Senate, and to the Speaker of the United States House of Representatives.

[NOTE.-The enrolled bill shows that the foregoing Resolution passed the Senate by the following vote, yeas 28, nays 1; and passed the House by the following vote, yeas 101, nays 1.]

Approved August 17th, 1910.

(It should be noted that Article III, Section 30 of the Texas State Constitution also provides that "No law shall be passed except by bill . . .")

Never having been printed by recorded legislative intent, the foregoing is not the text upon which the Texas legislators voted. In the Senate, the vote was upon the short phrase—"relating to the power of Congress to levy a tax on incomes." In the House, the vote was upon nothing more than three readings of the title of S. J. R. No. 1. The vote in neither house was sufficient in any way as a vote in ratification of the official Congressional Joint Resolution. This constituted a clear violation of the duty which the Texas Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion,

> substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed amendment to the Supreme Law of the land.

On January 3rd, 1911, four months after the purported passage of S. J. R. No. 1, Governor Campbell transmitted a copy of S. J. R. No. 1 to Washington, which read as follows—

> S. J. R. No. 1.
>
> Joint Resolution ratifying the Sixteenth Amendment to the Constitution of the United States of America.
>
> Whereas, both Houses of the Sixty-first Congress of the United States of America, at its first Session, by a Constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to-wit:
>
> A Joint Resolution proposing an Amendment to the Constitution of the United States.
>
> Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled (two-thirds of each House concurring therein). That the following Article is proposed as an Amendment to the Constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution, namely,
>
> Article XVI. The congress shall have power to lay and collect taxes on income, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration.
>
> Therefore, be it resolved by the Senate and House of Representatives of the State of Texas, That the said proposed Amendment to the Constitution of the United States be and the same is hereby ratified by the Legislature of the State of Texas.
>
> That certified copies of this preamble and joint resolution be forwarded by the Governor of this State to the the President of the United States, the Secretary of State of the United States, to the presiding officer of the United States Senate, and to the Speaker of the United States House of Representatives.

There is no other apparent record of the text of this resolution, but, even if this unsigned document had been printed for the use of the Texas legislators, it contained the following changes to the original Congressional Joint Resolution—

1. the preamble was modified

a. the word "article" was changed to "Article"

b. the word "amendment" was changed to "Amendment"

c. the word "legislatures" was changed to "Legislatures"

d. the colon following the second instance of the word "Constitution" was changed to a comma

e. the word "namely" and a following comma were added following the second instance of the word "Constitution"

2. the word "Congress" was changed to a common noun

3. the comma following the word "States" was deleted

None of these changes, by the same principle as set forth above, were permitted.

Finally, S. J. R. No. 1 was in violation of the following sections of the Texas State Constitution—

Article III, Section 48—

> The Legislature shall not have the right to levy taxes or impose burdens upon the people, except to raise revenue sufficient for the economical administration of the government, in which may be included the following purposes:
>
> The payment of all interest upon the bonded debt of the State:
>
> The erection and repairs of public buildings;
>
> The benefit of the sinking fund, which shall not be more than two per centum of the public debt, and for the payment of the present floating debt of the State, including matured bonds for the payment of which the sinking fund is inadequate;
>
> The support of public schools, in which shall be included colleges and universities established by the State; and the maintenance and support of the Agricultural and Mechanical College of Texas;
>
> The payment of the cost of assessing and collecting the revenue; and the payment of all officers, agents and employes of the State government, and all incidental expenses connected therewith;
>
> The support of the Blind Asylum, the Deaf and Dumb Asylum, and the Insane Asylum; the State cemetery and the public grounds of the State;
>
> The enforcement of quarantine regulations on the coast of Texas;
>
> The protection of the frontier.

The purpose of S. J. R. No. 1 was, of course, to impose a burden upon the citizens of the State of Texas and not for any of the particular uses to which the Legislature of Texas was limited under the provisions of the foregoing Section.

Article III, Section 33—

> All bills for raising revenue shall originate in the House of Representatives, . . .

Obviously, S. J. R. No. 1 did not originate in the House.

The purported ratification of the proposed Sixteenth Amendment by the State of Texas was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that, by the record, the Texas legislators did not vote upon even a semblance of the official Congressional Joint Resolution, and even if S. J. R. No. 1 may be considered to be the wording upon which the Texas legislators voted, that document contains the following changes—

a. the preamble was modified—

i. the word "article" was changed to "Article"

ii. the word "amendment" was changed to "Amendment"

iii. the word "legislatures" was changed to "Legislatures"

iv. the colon following the second instance of the word "Constitution" was changed to a comma

v. the word "namely" and a following comma were added following the second instance of the word "Constitution"

b. the word "Congress" was changed to a common noun

c. the comma following the word "States" was deleted

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

3. Violation of Article III, Section 37 of the Texas State Constitution by the House in taking up S. J. R. No. 1 for consideration prior to having had it reported out of a committee

4. Violation of Article III, Section 38 by the Senate in failing to have the signing of S. J. R. No. 1 recorded upon the journal, and, thus, to have also failed to publicly read the title of S. J. R. No. 1 immediately prior to such signing

5, Violation of Article III, Section 48 in that S. J. R. No. 1 imposes a burden upon the citizens of the State of Texas outside of the particular uses to which the State Legislature in Texas is limited

6. Violation of Article III, Section 33 in that S. J. R. No. 1 originated in the Senate, not the House

Ohio—January 19th, 1911

In the second regular session of the Ohio Legislature of 1910, Judson Harmon, the Governor, transmitted his certified copy of Senate Joint Resolution No. 40 to the Ohio House. Those legislators, some in the last year of their term, took no action on that resolution.

In the following session, the following Senate joint resolution was introduced on January 9th, 1911 —

> S. J. R. No. 6.
>
> WHEREAS, Both houses of the Sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to-wit:
>
> A joint resolution proposing an amendment to the Constitution of the United States.
>
> "**Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein).**
>
> That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislature of three-fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution, namely, Article XVI. The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration"; therefore, be it
>
> **Resolved by the Senate and House of Representatives of the State of Ohio:**
>
> That the said proposed amendment to the Constitution of the United States be, and the same is hereby ratified by the General Assembly of the State of Ohio; and, further be it
>
> **Resolved,** That the certified copies of this joint resolution be forwarded by the Governor of this state to the Secretary of State at Washington, and to the presiding officers of each house of the National Congress. (SJ at 30)

In observance of the rules of the Senate, S. J. R. No. 6 was ordered to lay on the table for a day.

Two days later, S. J. R. No. 6 was taken up for adoption, but consideration was postponed until the next Tuesday. (SJ at 41) On that Tuesday, the 17th, consideration of S. J. R. No. 6 was postponed again until the next day. (SJ at 46)

On the 18th, S. J. R. No. 6 was taken up again for a vote with the following result—

> The question being on the adoption of the joint resolution. The yeas and nays were taken, and resulted-yeas 31, Nays 1, as follows:
>
> Those who voted in the affirmative are: . . . -31.
>
> Mr. Purinton voted in the negative.

So the joint resolution was adopted. (SJ at 48)

S. J. R. No. 6 was read at length only once in the Senate, a violation of Article II, Section 16 of the Ohio Constitution which provides that—

> Every bill shall be fully and distinctly read on three different days, unless in case of urgency three-fourths of the house in which it shall be pending, shall dispense with the rule.

That same day, S. J. R. No. 6 was transmitted to the House for concurrence. A motion was made to suspend the rules in order to consider S. J. R. No. 6 without having it first lay on the table. That motion was rejected. (HJ at 79)

On the following day, the 19th of January, S. J. R. No. 6 was taken up for a vote with the following result—

> The question being "Shall the resolution be adopted?" The yeas and nays were taken, and resulted-yeas 100, nays 3, as follows:
> Those who voted in the affirmative are: . . . -100
> Those who voted in the negative are: . . .(3)
> So the resolution was adopted. (HJ at 80)

S. J. R. No. 6 was read only by title in the Ohio House, which, thus, also violated Article II, Section 16 of the Ohio Constitution.

On the 24th of January, the House sent S. J. R. No. 6 back to the Senate with a message of concurrence. (SJ at 56)

On February 7th, S. J. R. No. 6 was found correctly enrolled. (SJ at 98) On the following day, it was signed by the Speaker of the House of Representatives, in the presence of the House, (HJ at 182) and, also, by the President, in the presence of the Senate. (SJ at 104)

There is no record of presentation of S. J. R. No. 6 to the Governor. Failure to present such legislation to the Governor was a violation of Article II, Section 16 of the Ohio Constitution. In the memorandum of the Solicitor of the Department of State, dated February 15th, 1913, S. J. R. No. 6 is said to be "likely not" signed by the Governor.

On November 7th, 1912, almost twenty-two months after the purported passage of S. J. R. No. 6, a letter signed, George D. Long, Secretary to the Governor, was received by Knox. This letter stated—

> By direction of the Governor, in accord with the instruction of the Senate Joint Resolution of the Ohio Legislature adopted January 13, 1911, I am herewith enclosing a copy of S. J. R. #6, Mr. Yount, ratifying the proposed 16th amendment to the Constitution of the United States.

In addition to the abnormal delay of nearly twenty-two months in the transmission of this document, the date of adoption is wrong. The Ohio journals record the official date of adoption as January 19th, not January 13th.

The copy of S. J. R. No. 6 accompanying the letter was signed only by the Clerk of Senate and was not under the State Seal of Ohio. Secretary of State Knox had previously made certifications under the State Seal of California and the State Seal of Wyoming requisite proof of ratification from those States when the officials of those States had failed to furnish documents which were officially endorsed.

The copy of S. J. R. No. 6 which was received by Washington, D. C. read as follows—

79th General Assembly, S.J.R. No. 6,
Regular Session.
Mr. Yount.

Whereas,b oth houses of the Sixty-first Congress of the United States of America,at its first session,by a constitutional majority of two-thirds thereof-,made the following proposition to amend the Constitution of the United States of America in the following words,to-wit:

"A joint resolution proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),That the following article is proposed as an amendment to the Constitution of the United States,which,when ratified by the legislature of three-fourths of the several states,shall be valid to all intents and purposes as a part of the Constitution,namely Article XVI. The Congress shall have power to lay and collect taxes on incomes,from whatever source derived,without apportionment among (partially handwritten) the several states,and without regard to any census or enumeration."

Therefore, be it resolved by the Senate and House of Representatives of the State of Ohio,That the said proposed amendment to the Constitution of the United States, be, and the same is hereby,ratified by the General Assembly of the State of Ohio.

And, further be it resolved,That the certified copies of this joint resolution be forwarded by the Governor of this State to the Secretary of State at Washington and to the presiding officers of each house of the National Congress.

I, W.V. Goshorn, Clerk of Ohio Senate, certify the above and foregoing to be a true and correct copy of original resolution passed by General Assembly of Ohio as shown from the records of both houses.

(Signed)
W. V. Goshorn
Clerk of Ohio Senate.
(sic—ref. all commas)

The above document, relative to the original Congressional Joint Resolution, contains the following changes—

1. the preamble has been modified

a. the word "legislatures" was changed to "legislature"

b. the word "States" was changed to a common noun

c. the colon following the second instance of the word "Constitution" was changed to a comma

d. the word "namely" was added after the second instance of the word "Constitution"

2. the proposed amendment was made a part of the preamble by virtue of the lack of identifying punctuation separating the preamble from the proposed amendment

3. the word "States" in the proposed amendment was changed to a common noun

These changes to the official Congressional Joint Resolution were in violation of the duty of the Ohio Legislature to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to

> alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments,** either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

Thus, the Ohio ratification of the proposed Sixteenth Amendment was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. R. No. 6 contains the following changes from the official Congressional Joint Resolution—

a. the preamble has been modified

i. the word "legislatures" was changed to "legislature"

ii. the word "States" was changed to a common noun

iii. the colon following the second instance of the word "Constitution" was changed to a comma

iv. the word "namely" was added after the second instance of the word "Constitution"

b. the proposed amendment was made a part of the preamble by virtue of the lack of identifying punctuation separating the preamble from the proposed amendment

c. the word "States" in the proposed amendment was changed to a common noun

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878 and by the Secretary of State's office

3. Failure to read S. J. R. No. 6 fully and distinctly on three different days in both the House and the Senate in violation of Article II, Section 16 of the Ohio Constitution

4. Failure to present S. J. R. No. 6 to the Governor as required under Article II, Section 16 of the Ohio Constitution

Idaho—January 20th, 1911

Slightly less than two years after the passage of the Congressional Joint Resolution proposing the Sixteenth Amendment, both the Idaho House and the Idaho Senate voted in favor of Senate Joint Resolution No. 1 which, as introduced on the 9th of January, 1911, read as follows:

> SENATE JOINT RESOLUTION NO.1.
>
> **A JOINT RESOLUTION RATIFYING THE SIXTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA.**
>
> **WHEREAS**, both Houses of the Sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to-wit:
>
> "A joint resolution proposing an amendment to the Constitution of the United States.
>
> "Resolved By the Senate and the House of Representatives of the United States of America in Congress Assembled (Two-thirds of Each House Concurring Therein) That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution, namely, 'Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census of enumeration':"
>
> **Therefore Be It Resolved By the Legislature of the State of Idaho:**
>
> SECTION 1. That the said proposed amendment to the Constitution of the United States of America be, and the same is hereby, ratified by the Senate and House of Representatives of the State of Idaho.
>
> SEC. 2. That certified copies of this preamble and joint resolution be forwarded by the Governor of this State to the President of the United States, to the presiding officer of the United States Senate, and to the Speaker of the United States House of Representatives.

This resolution was read and referred to committee the same day. (SJ at 20) On the 11th, it was recommended to be printed and two days later, it was printed. (SJ at 26) On the 16th, S. J. R. No. 1 was reported out of committee and recommended to be passed. (SJ at 38) On the 17th, the Committee of the Whole recommended that a minor amendment be made and that the resolution be passed. (SJ at 45) The amendment was adopted and ordered printed. (SJ at 48) Left to stand was Mr. Poole's own personal amendment of the word "or", in front of the word "enumeration", to the word "of." This was an impermissible violation of the duty which the Legislature of the State of Idaho had to

concur only in the exact wording as proposed in United States Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments,** either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed amendment to the Supreme Law of the land.

Later that day, the author of S. J. R. No. 1 attempted to clear a legislative path for that resolution—

> Senator Poole moved that all Rules of the Senate **interfering** with the immediate passage of Senate Joint Resolution No. 1, as amended, be suspended; that the portions of Section 15 of Article 3 of the Constitution of the State of Idaho, requiring all **bills** to be read on three several days, be dispensed with, **this being case of urgency,** and that Senate Joint Resolution No. 1, as amended, be read the first and second time by title and the third time at length, section by section, and be put upon its final passage. (SJ at 51) (emphasis added)

The Idaho State Senators should have recorded their reasons for suspending their Constitution in their consideration of the ratification of the Supreme Law of the land. It certainly could not have been lack of time—they still had over half of the regular session remaining with plenty of time for extra and extraordinary sessions, as well as the regular session the next year. It couldn't have been any sort of time limit. In those days, the

seven-year limit was not yet practiced, nor was there any limit mentioned in the Congressional Joint Resolution.

In any event, the roll was called and the vote was 22 in favor and none against. The question is "In favor of what?" Immediately after the recording of these Ayes and Nays on the motion to dispense with the rules for the consideration of S. J. R. No. 1, as amended, the following inappropriate declaration was made—

> Whereupon, the President declared that Senate Joint Resolution No. 1, as amended, had passed. (SJ at 51)

In the afternoon session of that same day, the question was put before the Senate—

> Shall Senate Joint Resolution No. 1 be passed?

The resulting roll call counted 20 Senators voting Yea and none voting Nay—

> Whereupon the President declared that Senate Joint Resolution No. 1 had passed. (SJ at 52)

Even though the President of the Senate twice declared that Senate Joint Resolution No. 1 had passed, first, "as amended," and, then, as otherwise, Senate Joint Resolution No. 1 did not pass. In violation of Senator Poole's motion to read the resolution "the first and second time by title and the third time at length, section by section, and be put upon its final passage," the Idaho Senators did not have Senate Joint Resolution No. 1 read by title, nor did they have it read at length, nor did they have it read section by section. In his motion, Senator Poole refers to Article 3, Section 15 of the Idaho State Constitution. That section requires the following legislative procedure—

> MANNER OF PASSING BILLS. No law shall be passed except by bill, nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same shall have been read on three several days in each house previous to the final vote theron: provided, in case of urgency, two-thirds of the house where such bill may be pending may, upon a vote of the yeas and nays, dispense with this provision. On the final passage of all bills, they shall be read at length, section by section, and the vote shall be by yeas and nays upon each bill separately, and shall be entered upon the journal; and no bill shall become a law without the concurrence of a majority of the members present.

Senator Poole's motion may have dispensed with the provision requiring that a bill be read three times on three separate days, however, it did not dispense, nor could it have dispensed, with the requirement that all bills on final passage be read "at length, section by section," as recognized in Senator Poole's motion. In addition, according to the record of the journal, the Senators were well aware of the State Constitutional requirement of reading the bill at length, section by section just prior to a vote on final passage, since they had just voted upon a motion to do just that.

On the 20th of January, S. J. R. No. 1 was properly engrossed, (SJ at 53) and was then transmitted to the House for its concurrence.

> The following message was received from the Senate . . .
> I have the honor to transmit herewith Senate Joint Resolution No. 1 . . . which has passed the Senate. (HJ at 80)

The House then proceeded to handle S. J. R. No. 1 on an urgent basis as it was procedurally supposed to be done, and all in one day. There was still no apparent **urgent** need to pass S. J. R. No. 1—

> The following Senate Joint Resolution was read the first time in full.
>
> S. J. R. NO. 1, BY POOLE.
>
> Galloway moved that all rules of the House interfering with the immediate passage of this bill be suspended; that the portions of Section 15 of Article 3 of the Constitution of the State of Idaho, requiring all bills to be read on three several days, be dispensed with, **this being a case of urgency**, and that Senate Joint Resolution No. 1 be read the first and second time by title and the third time at length, section by section, and be put on its final passage.
>
> Seconded by Jenson.
>
> The question being, "Shall the rules be suspended?" the roll was called with the following result:
>
> * * *
>
> Total number of votes, 55. Ayes, 55. Nays, 0. Absent not voting, 4.
>
> And so the rules were suspended and S. J. R. No. 1 was read first and second time by title and third time at length, and put upon its final passage.
>
> The question being "Shall the resolution pass?" the roll was called with the following result:
>
> * * *
>
> Total number of votes, 55. Ayes, 55. Nays, 0. Absent not voting, 4.
>
> And so Senate Joint Resolution No. 1 passed and was ordered transmitted to the Senate. (HJ at 81)

The Senate received the transmittal and S. J. R. No. 1 was then referred to the Committee on Enrolled Bills. (SJ at 58) On the 23rd, S. J. R. No. 1 was signed by both the President of the Senate and Speaker of the House, and it was then transmitted to the Secretary of State. (SJ at 80) The Idaho Legislature, thus, bypassed the Governor in violation of Article IV, Section 10 of the State Constitution which provided that—

> Every bill passed by the legislature shall, before it becomes a law, be presented to the governor.

The Solicitor's memorandum, previously referenced, also indicates that the resolution, as received by the Department of State in Washington, D. C., was not signed by the Governor.

The Secretary of State of the State of Idaho, Wilfred L. Gifford, then partially obeyed his Legislature's legislative will as expressed in Section 2 of S. J. R. No. 1. It was the expressed intent of the Idaho Legislature that Mr. Gifford transmit certified copies of S. J. R. No. 1 to the United States Senate, the United States House of Representatives and the President of the United States. According to the National Archives, Mr. Gifford only sent a copy to the United States Senate and that copy was not signed. Since it is a doctrine of law that what is expressed excludes that which is not expressed, it apparently was never the intent of the Idaho State Legislature to transmit a certified copy of the resolution to the Secretary of State of the United States, a violation of Section 205 of the Revised Statutes of 1878, a copy of which statute was transmitted in the packet sent by Knox to the Governors to be transmitted to their respective Legislatures—

> Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.

The copy which Mr. Gifford transmitted to the United States Senate eventually did find its way into the hands of the Secretary of State of the United States, nevertheless, that was not the legislative intent of the Legislature of the State of Idaho.

The purported ratification of the proposed Sixteenth Amendment by the Legislature of the State of Idaho was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. R. No. 1 contained the following changes—

a. the preamble was modified—

i. the word "by" was changed to "By"

ii. the word "assembled" was changed to "Assembled"

iii. the phrase "two-thirds of each House concurring therein" was changed to "Two-thirds of Each House Concurring Therein"

iv. the third instance of the word "States" was changed to a common noun

v. the colon following the second instance of the word "Constitution" was changed to a comma

vi. the word "namely" followed by a comma was added to the end of the preamble

vii. the designation "Article XVI." was appended to the preamble by virtue of the ending comma

b. the designation "Article XVI." was removed from the proposed amendment by virtue of the comma added to the end of the preamble

c. the preposition "of", relating the word "enumeration" to the word "census", replaced the conjunctive word "or" and was then left in when the Senate made another amendment to the resolution

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878 and by legislative intent per Section 2 of S. J. R. No. 1

3. Violation of Article III, Section 15 of the Idaho State Constitution in the failure to read S. J. R. No. 1 at length, section by section, just prior to the vote on final passage in the Senate

4. Violation of Article VI, Section 10 of the Idaho State Constitution in the failure to present S. J. R. No. 1 to the Governor.

Oregon—January 23rd, 1911

In the Oregon Senate, on January 9th, 1911, Senator Miller introduced the following—

SENATE JOINT RESOLUTION NO. 1

Ratifying an amendment proposed by the Sixty-first Congress of the United States to the Constitution of the United States of America, designated as Article XVI, and relating to an income tax.

Whereas, the Sixty-first Congress of the United States of America, at its first session begun and holden at Washington in the District of Columbia, on Monday, the fifteenth day of March, 1909, by joint resolution proposed an amendment to the Constitution of the United States, in words and figures as follows, to wit:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of each House concurring therein:

That the following article is proposed as an amendment to the Constitution of the United States, which when ratified by the legislatures of three-fourths of the several states shall be valid in all intents and purposes as part of the Constitution.

ARTICLE XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration; now, therefore, be it "**Resolved by the Senate and House of Representatives of the State of Oregon:**

That said amendment to the Constitution of the United States be and is hereby ratified; and be it further

Resolved, That certified copies of the foregoing preamble and resolution be forwarded by his excellency the Governor of Oregon to the President of the United States, to the Secretary of State of the United States, to the Presiding Officer of the United States Senate, and to the Speaker of the House of Representatives, respectively."

At that point, the Senate adjourned until 10 o'clock A. M. the next day. (SJ at 13)

S. J. R. No. 1, as printed in the Senate journal and later in the House journal, contained the following changes to the official Congressional Joint Resolution—

1. the preamble was modified

a. a comma was inserted after the word "Resolved"

b. the opening paren was replaced by a comma

c. the closing paren and the comma following were replaced by a colon

d. the comma following the word "which" was deleted

e. the word "States" was changed to a common noun

f. the comma following the word "States" was deleted

g. the word "to" before the phrase "all intents" was changed to the word "in"

2. the word "States" was changed to a common noun

3. the period was changed to a semicolon

4. the phrase "now, therefore, be it" and the resolution following were appended to the proposed amendment by virtue of the change of the period to a semicolon

Any such changes constituted violations of the duty which the Oregon Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed amendment to the Supreme Law of the land.

On the 16th of January, the Committee on Resolutions reported S. J. R. No. 1 with a favorable recommendation and the Senate adopted that report. S. J. R. No. 1 was, thereupon, made a special order for the following Wednesday. (SJ at 43)

On the 17th of the same month, without any evidence of action having been recorded in the House journal, the following message was received in the Senate—

> **Mr. President**: I am directed by the Speaker to inform you that the House has ratified U. S. Joint Resolution No. 40, and the same is herewith transmitted to you for your consideration.

W. F. DRAGER, Chief Clerk.

SIXTY-FIRST CONGRESS OF THE UNITED STATES OF AMERICA.

AT THE FIRST SESSION.

Begun and held at the City of Washington, on Monday, the fifteenth day of March, one thousand nine hundred and nine.

JOINT RESOLUTION.

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Resolved, by the Senate and the House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein):

"That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes, as a part of the Constitution:

"ARTICLE XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

J. G. CANNON,
Speaker of the House of Representatives.
J. S. SHERMAN,
Vice-President of the United States and President of the Senate.
Attest: A. McDOWELL, Clerk of the House of Representatives.
CHAS. G. BENNETT, Secretary.
By HENRY H. GILFRY, Chief Clerk.
I certify that this joint resolution originated in the Senate.
CHAS. G. BENNETT, Secretary.
By HENRY H. GILFRY, Chief Clerk.
(SJ at 50)

The text received in the above message is very nearly correct compared to that found in the Congressional Joint Resolution, however, there is no designation of the Oregon Legislature for this supposed resolution and without any record of its passage in the House journal, it is, as such, a nullity.

The next day, the 18th, the Senate went ahead with consideration of S. J. R. No. 1—

> This being the hour set for the consideration of Senate Joint Resolution No. 1 the same was taken up. The question being, "Shall the resolution be adopted?" the roll was called and the vote was:
> YEAS-25 . . .
> NAYS-2 . . .
> ABSENT-3 . . .
> So the resolution was adopted. (SJ at 53)

This vote was taken in violation of Article IV, Section 19 of the Constitution of the State of Oregon—

> Every bill shall be read by sections, on three several days, in each House, unless, in case of emergency, two-thirds of the House where such bill may be pending, shall, by a vote of yeas or nays, deem it expedient to dispense with this rule; but the reading of a bill by sections on its final passage shall in no case be dispensed with . . .

S. J. R. No. 1 was not read by sections on three different days nor was it read by sections

on final passage. Following this vote in the Senate, the House was sent a notifying communication on the same day—

SALEM, January 18, 1911.

Mr. Speaker: I am directed by the President to inform you that the Senate has passed Senate Joint Resolution No. 1.

And the same is herewith transmitted to you for consideration of the House.

E. H. FLAGG, Chief Clerk.

SENATE JOINT RESOLUTION NO. 1

Ratifying an amendment proposed by the Sixty-first Congress of the United States to the Constitution of the United States of America, designated as Article XVI, and relating to an income tax.

Whereas, the Sixty-first Congress of the United States of America, at its first session begun and holden at Washington in the District of Columbia, on Monday, the fifteenth day of March, 1909, by joint resolution proposed an amendment to the Constitution of the United States, in words and figures as follows, to wit:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of each House concurring therein, That the following article is proposed as an amendment to the Constitution of the United States, which when ratified by the legislatures of three-fourths of the several states shall be valid in all intents and purposes as part of the Constitution.

ARTICLE XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration; now, therefore, be it

Resolved by the Senate and House of Representatives of the State of Oregon:

That said amendment to the Constitution of the United States be and is hereby ratified; and be it further

Resolved, That certified copies of the foregoing preamble and resolution be forwarded by his excellency the Governor of Oregon to the President of the United States, to the Secretary of State of the United States, to the Presiding Officer of the United States Senate, and to the Speaker of the House of Representatives, respectively. (HJ at 76)

S. J. R. No. 1 was reported out of committee the next day—

REPORT.

SALEM, January 19, 1911.

Mr. Speaker: Your Committee on Resolutions, to whom was referred Senate Joint Resolution No. 1, beg leave to report that we have had the same under consideration, and respectfully report it back with the recommendation that it do pass.

J. A. BUCHANAN, Chairman.

The report of the committee was adopted and Senate Joint Resolution No. 1 was made a special order of business for the following Monday. (HJ at 98)

On that Monday, the 23rd, S. J. R. No. 1 came up for a vote in the House—

Special order of business for the consideration of Senate Joint Resolution No. 1 at this hour.

The question being "Shall the same be adopted?"

Roll call on the adoption of Senate Joint Resolution No. 1:

YEAS-45 . . .

NAYS-8 . . .

ABSENT-6 . . .
So the resolution was adopted. (HJ at 126)

Once again, the State Constitution was violated in a failure by the House to read S. J. R. No. 1 by sections on three different days and in a failure to have S. J. R. No. 1 read by sections on the final passage. The House, shortly thereafter, sent a message to the Senate concerning this vote—

SALEM, January 23, 1911.
Mr. President: I am directed by the Speaker to inform you that the House has concurred in the adoption of Senate Joint Resolution No. 1, and the same is herewith transmitted to you for enrollment.
W. F. DRAGER, Chief Clerk. (SJ at 117)

On the 30th of January, the President of the Senate signed S. J. R. No. 1—

The President announced that he was about to sign . . . Senate Joint Resolution No. 1, and subsequently that he had signed the same. (SJ at 180)

Later that day, the following message was sent to the House—

SALEM, January 30, 1911.
Mr. Speaker: I am directed by the President to inform you that Senate Joint Resolution No. 1 correctly enrolled, and is herewith transmitted to you for your signature.
E. H. FLAGG, Chief Clerk. (HJ at 211)

The next day, the Governor, through his private secretary, informed the President of the Senate that he had transmitted copies of S. J. R. No. 1 to the President of the United States, to the Secretary of State, to the Presiding officer of the United States Senate, and to the Speaker of the House of Representatives. (SJ at 201)

The copy of S. J. R. No. 1 received in Washington, D. C. omitted the change in punctuation evident in the version of S. J. R. No. 1 printed in both journals—namely, the change of the ending period to a semicolon. Furthermore, several other changes are evident between the version received in Washington and that passed in the Oregon Legislature.

While the attempt in the Oregon House to bypass the legislative procedural necessity of voting upon the ratification of the proposed Sixteenth Amendment was disturbing, it did no harm, however, the following violations occurred in the Oregon Legislature's purported ratification of the proposed Sixteenth Amendment—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. R. No. 1 contained the following changes—

a. the preamble was modified
i. a comma was inserted after the word "Resolved"
ii. the opening paren was replaced by a comma
iii. the closing paren and the comma following were replaced by a colon
iv. the comma following the word "which" was deleted
v. the word "States" was changed to a common noun
vi. the comma following the word "States" was deleted
vii. the word "to" before the phrase "all intents" was changed to the word "in"
b. the word "States" was changed to a common noun

c. the period was changed to a semicolon

d. the phrase "now, therefore, be it" and the resolution following were appended to the proposed amendment by virtue of the change of the period to a semicolon

2. Failure of the Senate to read S. J. R. No. 1 on three separate days violating Article IV, Section 19 of the Oregon State Constitution

3. Failure of the Senate to read S. J. R. No. 1 by sections on the final passage Article IV, Section 19 of the Oregon State Constitution

4. Failure of the House to read S. J. R. No. 1 on three separate days Article IV, Section 19 of the Oregon State Constitution

5. Failure of the House to read S. J. R. No. 1 by sections on the final passage Article IV, Section 19 of the Oregon State Constitution

6. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

Washington—January 26th, 1911

On August 21st, 1909, the Governor of Washington sent a letter to Philander Knox, Secretary of State of the United States, acknowledging receipt of the certified copy of United States Senate Joint Resolution No. 40 and stating that it was transmitted to the legislature which was then in session.

On January 11th, 1911, the proposed Sixteenth Amendment had still not been ratified by the Washington State Legislature. The following resolution was introduced into that session—

> SENATE JOINT RESOLUTION NO. 1
>
> By Senator Bryan:
>
> **Be it resolved,** By the Senate and the House of Representatives of the legislature of the State of Washington, That the following amendment to the constitution of the United States, submitted to the several states by congress, pursuant to article five (5) of said constitution be and the same is hereby ratified as follows, to-wit: "Article XVI. The congress shall have power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." (SJ at 52)

S. J. R. No. 1 was taken up immediately with the following result—

> Senator Bryan moved that the rules be suspended, the resolution read the second time, ordered printed and made a special order for 2 o'clock p. m., Wednesday, January 18, 1911.
>
> Senator Falconer moved as a substitute that the resolution be read the second time, ordered printed and referred to the committee on revenue and taxation, when appointed. The substitute motion carried. (SJ at 52)

Apparently Senator Bryan wished to have the rules suspended in order to bypass committee consideration, however, under Senator Falconer's substitute motion, the rules were not suspended, and S. J. R. No. 1 went to committee.

On the 18th, S. J. R. No. 1 was reported for consideration on general file—

> We, your committee on public revenues and taxation, to whom was referred Senate joint resolution No. 1, "relating to an amendment to the constitution of the United States, have had under consideration, and we respectfully report the same back to the Senate with the recommendation that it be placed on general file.
>
> The report was adopted. (SJ at 126)

On the 23rd of January, S. J. R. No. 1 was taken up and amended—

> The secretary read Senate joint resolution No. 1, relative to the levying of a tax

on incomes by the United States.

On motion of Senator Bryan the resolution was amended by striking the comma after the word "States" in line 4 of the resolution and by striking the letter "s" from the word "incomes" in line 8.

On motion of Senator Falconer, the further consideration of Senate joint resolution No. 1 was made a special order for 2 o'clock in the afternoon of Wednesday, January 25th. (SJ at 155)

Further action on S. J. R. No. 1 did not take place until th 26th, at which time Senator Bryan's amendments were voted upon and the vote on final passage of the resolution taken—

Senate joint resolution No. 1, by Senator Bryan, "Relating to the ratification of amendment giving congress power to levy an income tax," was read third time.

The previous question on final passage of the bill was moved by Senators Falconer, Brown, Landon and Ruth.

The motion for the previous question carried.

The secretary called the roll and Senate joint resolution No. 1 passed the Senate by the following vote:

Those voting aye were: . . . -32.

Those voting nay were: . . . -5.

Absent or not voting were: . . . -5.

On motion of Senator Bryan, the rules were suspended and Senate joint resolution No. 1 was ordered immediately transmitted to the House. (SJ at 229)

Thus, the Washington Senate voted, first, to amend the wording of the proposed amendment, and, second, to pass the resolution as amended. Later that same day, the following message was transmitted to the House

The Senate has passed . . .

. . . Senate joint resolution No. 1, relating to the ratification of the proposed amendment to the constitution of the United States, providing for an income tax;

* * *

And the same are herewith transmitted. (HJ at 154)

S. J. R. No. 1 was, shortly thereafter, read the first time in the House—

Senate joint resolution No. 1, by Senator Bryan, relating to the ratification of federal amendments to the constitution relative to income tax.

Referred to committee on revenue and taxation. (HJ at 158)

That same day, the following occurred—

On motion of Mr. Todd, the rules were suspended, Senate joint resolution No. 1 was taken from the committee on revenue and taxation, was substituted for House concurrent resolution No. 3, and considered under second reading.

Senate joint resolution No. 1 was read the second time in full by sections.

On motion of Mr. Todd, the rules were suspended, the second reading considered the third, the resolution placed on final passage, and passed the House by the following vote: Yeas, 80: nays, 1; absent or not voting, 15.

Those voting yea were: . . . -80.

Those voting nay were: . . . -1.

Those absent or not voting were: . . . -15.

On motion of Mr. Todd, House concurrent resolution No. 3 was indefinitely postponed. (HJ at 160)

S. J. R. No. 1 was then transmitted back to the Senate—

> . . . Senate joint resolution No. 1, by Senator Bryan, "Relating to ratification of amendment providing for an income tax.
> And the same are herewith transmitted. (SJ at 252)

On February 1st, the following took place in the Senate—

> Your committee on enrolled bills, to whom was referred . . .
> . . . Senate joint resolution No. 1, "Relating to an amendment of article XVI of the constitution of the United States in regard to taxes on income ;
> —have compared same with the original or engrossed bills and joint resolution, respectively, and find them correctly enrolled.

Since S. J. R. No. 1 was compared for purposes of enrollment along with several other bills, it is somewhat difficult to tell whether S. J. R. No. 1 was compared to the original draft of S. J. R. No. 1 or with the final draft of S. J. R. No. 1. In any event, Senator Bryan, compared that draft with the resolution as enrolled and found that it had been properly enrolled. Shortly thereafter, S. J. R. No. 1 was signed—

> The president signed Senate joint resolution No. 1. (SJ at 278)

That same day, a message was sent to the House with the following information—

> The president has signed . . .
>
> * * *
>
> . . . enrolled Senate joint resolution No. 1, "relating to an amendment of article XVI of the constitution of the United States in regard to taxes on income. (HJ at 221)

The Speaker of the House then signed S. J. R. No. 1, also. (HJ at 221)

The next day, the Senate received a message informing them that the Speaker had signed S. J. R. No. 1—

> The speaker has signed . . .
>
> * * *
>
> . . . Senate joint resolution No. 1, "Relating to the amendment to the constitution of the United States, submitted to the several states by congress, etc. (SJ at 289)

There is no record of presentation of S. J. R. No. 1 to the Governor. Under Article III, Section 12 of the Washington State Constitution which required such legislation to be presented to the Governor, this was a violation.

The first letter of transmittal of S. J. R. No. 1 on the Governor's stationery was dated February 25th, 1911, but was unsigned by the Governor. It was accompanied by a certificate from the Secretary of State of the State of Washington, signed and dated February 24th, 1911 and by a copy of S. J. R. No. 1 signed by the Speaker of the House and by the President of the Senate but not by the Governor.

The second letter of transmittal of S. J. R. No. 1 on the Governor's stationery was dated March 7th, 1911, and signed, but with a different signature than the original

acknowledgement. That letter was accompanied by another certificate, dated March 1st, from the Secretary of State, signed with a different signature than that on the previous certificate and with the signature of the Assistant Secretary of State. The copy of S. J. R. No. 1 in this transmittal was unsigned.

The signed copy of S. J. R. No. 1 read as follows—

> SENATE JOINT RESOLUTION NO. 1.
>
> BE IT RESOLVED by the Senate and the House of Representatives of the Legislature of the State of Washington:
>
> That the following amendment to the constitution of the United States, submitted to the several states by congress, pursuant to article five (5) of said constitution be and the same is hereby ratified, as follows towit (sic): "Article XVI. The congress shall have power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states and without regard to any census or enumeration."

The unsigned copy contained one discrepancy from the signed copy—the word "article" was changed to "articles." The signed copy contained the following changes from the official Congressional Joint Resolution

1. the preamble was replaced by a preamble composed entirely by the Washington legislature
2. the word "Congress" was changed to "congress"
3. the word "incomes" was changed to "income"
4. the word "States" was changed to "states"
5. the comma following the word "States" was deleted

All such changes were a violation of the duty of the Washington State Legislature to concur only in the exact wording as proposed in United States Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate

amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.

The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed amendment to the Supreme Law of the land.

S. J. R. No. 1 is recorded in full in the journals only once and that prior to its having been amended on February 1st. Every other apparent reading is by title only. The following represent all the different titles which were read for S. J. R. No. 1—

1. "relating to an amendment to the constitution of the United States"
2. "relative to the levying of a tax on incomes by the United States"
3. "Relating to the ratification of amendment giving congress power to levy an income tax"
4. "relating to the ratification of the proposed amendment to the constitution of the United States, providing for an income tax"
5. "relating to the ratification of federal amendments to the constitution relative to income tax"
6. "Relating to ratification of amendment providing for an income tax"
7. "Relating to an amendment of article XVI of the constitution of the United States in regard to taxes on income"
8. "relating to an amendment of article XVI of the constitution of the United States in regard to taxes on income"
9. "Relating to the amendment to the constitution of the United States, submitted to the several states by congress, etc."

By virtue of the fact that 7. and 8. represent the only title that was ever repeated, along with the purposeful amendment by motion to the wording of the amendment, this attests to the desire of the Washington State Legislature to amend the proposed Sixteenth Amendment, not to ratify it in its original state.

Finally, S. J. R. No. 1 was passed in violation of Article VII, Section 2 of the Washington State Constitution, which states that—

> The Legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property: . . .

The Legislature of the State of Washington could not "prescribe such regulations by general law" for any tax which would issue as a result of their ratification of the proposed Sixteenth Amendment.

The purported ratification of the proposed Sixteenth Amendment by the Legislature of the State of Washington was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by

Congress in that S. J. R. No. 1 contained the following changes from the official Congressional Joint Resolution—

a. the preamble was replaced by a preamble composed entirely by the Washington Legislature

b. the word "Congress" was changed to a common noun

c. the word "incomes" was changed to "income"

d. the word "States" was changed to a common noun

e. the comma following the word "States" was deleted

2. Violation of Article III, Section 12 of the Washington State Constitution requiring the presentation of S. J. R. No. 1 to the Governor for approval

3. Violation of Article VII, Section 2 of the Washington State Constitution in that passing on S. J. R. No. 1 would make it impossible for the State Legislature to carry out the particular provisions of that section

In addition, there are some apparent discrepancies in the transmission of the certified documents to Washington, D. C. in that the documents do not bear signatures, for both the Governor and the Secretary of State, which match previous signatures. (See Appendix)

California—January 31st, 1911

With the perception that the State of California was facing severe financial difficulties, State Senator Burnett offered the following resolution, entitled "CASE OF URGENCY RESOLUTION," on January 5, 1911—

> **Resolved**, That Senate Bill No. 20 presents a case of urgency, as that term is used in Section 15 of Article IV of the Constitution, and the provision of that section requiring that the bill shall be read on three several days in each House is hereby dispensed with, and it is ordered that said bill be read the first, second, and third times, and placed upon its passage.

Senator Burnett's resolution to suspend the State Constitutional provisions for the passage of legislation passed by a margin of 31 to 0. The entire California Senate, having voted in favor of this resolution, unanimously believed that this was an urgent situation. Senate Bill No. 20 provided—

> An Act to make an appropriation for the **contingent** expenses of the Senate for the session of the thirty-ninth Legislature of the State of California during the sixty-second fiscal year.

Whether or not those "contingent expenses" should have been considered an "urgency" under the State Constitution is a question which shall not be debated here, although it's difficult to imagine what kind of contingencies could have caused such an urgent situation. Much more significant is that the California State legislators demonstrated that they knew what their State Constitutional rules were and what was necessary to bypass those rules—an urgent situation and a two-thirds vote in agreement of the urgency of a situation.

Article IV, Section 15 of the California State Constitution requires the following in the passage of bills—

1. Each bill must be printed, along with its amendments, for the legislators, prior to final passage.
2. Each bill must be read in each house on three separate days, unless an urgent situation exists, in which case, this particular rule may be suspended on two-thirds vote.
3. Each bill must be read at length on the final passage.
4. The vote on each bill must be by Yeas and Nays and those results must be entered upon the Journal.
5. Passage requires a majority of votes in each house.

In addition, procedural rules must be followed to ensure an orderly legislative process. Here is a simplified version of California's procedures in Senator Burnett's day—

1. The resolution is introduced in the originating house by a first reading and referred to an appropriate committee for a recommendation.

2. The resolution generally is printed at either step 1 or step 2 as a courtesy to the members of the house, and as a convenience to the members of the committee.

3. The resolution is reported out of committee with a recommendation to affirm as introduced, or to amend.

4. The resolution is read a second time and ordered to be engrossed, or if an amendment is approved, the resolution is corrected, reprinted, and, then, ordered to be engrossed.

5. The resolution must then be reported as having been engrossed correctly.

6. The resolution is then put to a vote, and if passed, ordered to the other house for consideration.

7. In the other house, the resolution is ordered enrolled and must be reported as having been correctly enrolled.

8. If the other house concurs, the resolution is ordered sent to the Governor and filed with the Secretary of State.

On January 5, 1911, California State Senator Sanford introduced Senate Joint Resolution No. 2—

> Ratifying and approving the proposed amendment to the Constitution of the United States relative to income tax.

As introduced and subsequently printed S. J. R. No. 2 read—

> WHEREAS, The Sixty-first Congress of the United States of America, at the first session begun and held in the city of Washington, on Monday the 15th day of March.QOPO (sic), proposed an amendment to the Constitution of the United States, in words and figures as follows:
>
> ARTICLE)XVI. Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several states, and without regard to census enumeration.
>
> NOW, THEREFORE BE IT RESOLVED BY THE SENATE OF THE STATE OF CALIFORNIA, AND THE ASSEMBLY, JOINTLY,
>
> That the foregoing resolution, being the sixteenth amendment to the Constitution of the United States, be, and the same is hereby approved and ratified.

It does not appear from the Senate Journal how Senator Sanford composed his version of the Sixteenth Amendment, i.e., there is no record of the transmittal of the certified copy of the Congressional Joint Resolution from Secretary of State Philander Knox. The official version of the Congressional Joint Resolution reads—

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),* That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:
>
> ARTICLE XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

S. J. R. No. 2 amended the original by deleting the very first word in the official

version, "The", and the word "or" was deleted as well. In this truncated version, both commas bordering the phrase "from whatever source derived" were deleted, too. The word "States" was changed to a common noun.

Nevertheless, Sanford's version of S. J. R. No. 2 was referred to the Committee on Federal Relations which recommended amending what Sanford had introduced.

On the 20th, the resolution was reported out of committee and read for the first time.

> During the reading of the joint resolution, the following amendments were submitted by committee:
>
> On page 1, line 3, strike out the letters in capitals "Q. O. P. O," and insert in lieu thereof "1909."
>
> On page 1, line 10, strike out the semicolon and insert in lieu thereof a period; strike out all of the remainder of line 10 after said semicolon and of lines 11, 12, 13, and 14, and insert in lieu thereof the following:
>
> "Now, therefore, be it
>
> **Resolved by the Senate and Assembly, jointly**, That the Legislature of the State of California hereby approves and ratifies the foregoing proposed amendment to the Federal Constitution, the same being the eighty-sixth amendment to the Constitution of the United States and said proposed constitutional amendment is hereby approved and ratified.

Both amendments to the "eighty-sixth amendment to the Constitution of the United States" were adopted and were then ordered to be printed and engrossed. All the changes in the proposed amendment made by the California Legislature were in violation of the duty which the California Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-1220, of the 97th CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments,** either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must

prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

On the 23rd of January, the Senate came up with their finalized version of S. J. R. No. 2—

Ratifying and approving the proposed amendment to the Constitution of the United States relative to income Tax.

WHEREAS, The sixty-first Congress of the United States of America, at the first session begun and held in the city of Washington, on Monday the 15th day of March, 1909, proposed an amendment to the Constitution of the United States, in words and figures as follows:

ARTICLE XVI.

Congress shall have power to lay and collect taxes on income from whatever source derived without apportionment among the several states, and without regard to census enumeration; now, therefore, be it

Resolved by the Senate and Assembly, jointly, That the Legislature of the State of California, hereby approves and ratifies the foregoing proposed amendment to the Federal Constitution, the same being the sixteenth amendment to the Constitution of the United States, and said proposed constitutional amendment is hereby approved and ratified.

The resolution was then read for only the second time, a fact confirmed by the record in the State Archives, taken up for a vote and adopted by a margin of 33 to 0 and was then ordered transmitted to the Assembly.

On January 31st, the Assembly Journal shows that the House took up Senate Joint Resolution No. 2, whereupon the resolution was read for the third time, adopted, and ordered transmitted to the Senate, however, it cannot be reported what the vote was, because it isn't in the journal. Each house of the California Legislature in its "passage" of S. J. R. No. 2 violated Article 4, Section 15 of the California State Constitution—

. . . Nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same be read on three several days in each house, unless, in the case of urgency, two thirds of the house where such bill may be pending shall, by vote of yeas and nays, dispense with this provision . . . . on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the journal . . .

On July 27th, 1911, the Secretary of State of California, Frank C. Jordan, sent the following letter to Knox—

I am enclosing herewith Senate Joint Resolution No. 2, Chapter 8, in **re** Ratifying and Approving the proposed amendment to the Constitution of the United States relative to Income Tax, as passed by the last session of the legislature. Assembly Daily Journal of January 31, and Senate Daily Journal of January 23, are marked indicating the action of both Houses in this matter.

Same is forwarded to you by this office at the request of Walter V. Bowns, of the Ethic Association . . . it appearing from a communication just received from him that through some oversight the resolution has not reached your Depart-

ment as coming from the Secretary of the Senate, and the Clerk of the Assembly of the last session of the legislature.

Knox responded by sending a letter back to Jordan dated August 3rd, 1911 acknowledging receipt of Jordan's letter and requesting "a certified copy of the Resolution under the seal of the State, **which is *necessary* in order to carry out the provisions of Section 205 of the Revised Statutes of the United States.**" Apparently Jordan hadn't bothered to transmit a certified copy of S. J. R. No. 2 to Knox.

On February 3rd, 1912, Jordan finally got around to answering Knox's letter and sent a copy of S. J. R. No. 2 to Knox, however, the copy sent to Knox was neither under the great seal nor certified as requested.

California, thus, committed the following violations in its purported ratification of the proposed Sixteenth Amendment—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. R. No. 2 changed the official Congressional Joint Resolution in the following ways—

a. the first word, "The," was deleted

b. the word "or" was deleted

c. both commas bordering the phrase "from whatever source derived" were deleted

d. the word "States" was changed to a common noun

e. the ending period was changed to a semicolon, thereby appending the entire enacting clause of S. J. R. No. 2 onto the wording of the proposed amendment

f. the original preamble was completely modified

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878 as shown by Knox's letter.

3. Lack of jurisdiction of the certified copy of the Congressional version transmitted from the Governor.

4. Failure to read the resolution three times on different days in the Senate in violation of the provisions of Artiicle 4, Section 15 of the California State Constitution

5. Failure to record the Yeas and Nays in the Assembly vote in violation of Article 4, Section 15 of the California State Constitution

Montana—January 31st, 1911

In an acknowledgement letter dated July 31st, 1909, from the Governor of Montana, Edwin L. Norris, to the Secretary of State of the United States, Philander Knox, the Governor stated the following—

> I shall submit the (certified copy of the Congressional Joint Resolution) to the next session of the Legislative Assembly of Montana, when convened, **according to law.** (emphasis added)

Governor Norris, thus, set forth his duty "according to law" to submit the Congressional Joint Resolution to the Legislature of Montana.

At the next session of the Legislative Assembly of Montana, there is no apparent record of Norris' submission of the Congressional Joint Resolution to that Assembly "according to law." The Governor's address to the Legislature on January 3rd, 1911 is devoid of any mention of Senate Joint Resolution No. 40. Nevertheless, on January 5th, 1911, a resolution was introduced by Representative Whaley which was entitled—

> House Joint Resolution No. 2.
> A Joint Resolution ratifying the Sixteenth Amendment to the Constitution of the United States.

H. J. R. No. 2 was then read the first and second times at length and referred to the Committee on Federal Relations. (HJ at 29)

On the 12th, H. J. R. No. 2 was favorably reported out of committee. The report was adopted and H. J. R. No. 2 was referred to the Printing Committee. (HJ at 66) On the 14th, H. J. R. No. 2 was favorably reported out of the Committee of the Whole and that report was adopted. (SJ at 92)

Without any further action in the House, the Senate received the following message from the House—

> I am directed by the House to inform your Honorable Body that House Joint Resolution No. 2 has this day been read three times and passed, title agreed to, and is herewith transmitted to the Senate for your concurrence.
> Respectfully,
> FINLAY McRAE, Chief Clerk.
> (SJ at 107)

H. J. R. No. 2 was then introduced in the Senate, read the first and second times, and then referred to the Committee on Federal Relations. (SJ at 107) On the 19th of January, the Senate received another message from the House—

> I am directed by the House to request that the Honorable Senate return House

Joint Resolution No. 2 to the House for the purpose of allowing it to correct an error which has taken place in regard to its final passage by the House.

Respectfully,

FINLAY McRAE, Chief Clerk.

Moved by Donlan, seconded by Meyer, that House Joint Resolution No. 2 be recalled from the Committee on Federal Relations and be returned to the House.

Motion adopted. (SJ at 132)

The House journals contain no discussion about the specific legislative error committed in the final passage of H. J. R. No. 2 which caused the House to have the Senate return H. J. R. No. 2, however, H. J. R. No. 2 was never put upon the calendar for its third reading and a third reading was never had in the House.

That same day, H. J. R. No. 2 was returned from the Senate with the accompanying message—

I am directed by the Senate to inform your Honorable Body that, a communication from the House asking for return of House Joint Resolution No. 2, for correction of history was this day withdrawn from committee on Federal Relations of the Senate and the Secretary was instructed to return same to the House, and same is herewith returned.

Respectfully,

NATHAN GODFREY,

Secretary of the State.

(HJ at 154)

Once H. J. R. No. 2 was put back into the legislative process in the House, it became obvious that H. J. R. No. 2 had to be returned for no mere "correction of history." An attempt was made to correct one of the House's errors on the 21st—

Your Committee on Engrossment beg leave to report . . . House Joint Resolution No. 2 correctly engrossed.

Report adopted. (HJ at 179)

Having been correctly engrossed at this point, H. J. R. No. 2 apparently was not correctly engrossed prior to its transmission to the Senate. H. J. R. No. 2 was, therefore, never printed in its final draft prior to the vote on its passage in the House. It is difficult to determine what previous drafts of H. J. R. No. 2 may have contained because the journals never record anything related to the actual text of any version of H. J. R. No. 2. On the 24th of January, the House took up the final vote of H. J. R. No. 2—

House Joint Resolution No. 2 having been read three several times was passed by the following vote:

Ayes- . . . -61.

Noes-None.

Absent and not voting- . . . 12.

Title agreed to. (HJ at 200)

Though the above journal entry mentions that H. J. R. No. 2 had "been read three several times," there is no other journal record of an actual reading taking place. A failure to have a third reading, however, was not a Constitutional violation in Montana. A failure to publish the final draft of H. J. R. No. 2 was a violation of Article V, Section 22 of the Montana Constitution which provided that—

No bill shall be considered or become a law unless referred to a committee,

returned therefrom and printed for the use of the members.

The House journal, while it does not record any revisions or amendments to H. J. R. No. 2, also, does not record the actual printing of H. J. R. No. 2 before it was prematurely sent to the Senate and then brought back. Having not been correctly engrossed prior to its shortened stay in the Senate, it could not have been correctly printed anyway. The history attached to the archival copy of H. J. R. No. 2 records several acts of the House which were never recorded on the House journal. Among those acts which went unrecorded in the House journal were the following significant acts—

1. Correct printing on January 14th
2. Placed on file for third reading on the 14th
3. Referred to calendar for third reading on the 20th

In addition, that history contains the following discrepancy: The correct engrossment is reported on the 20th of January in the history, but, on the 21st in the journal.

After H. J. R. No. 2 was brought back to the House, its final draft is reported as correctly engrossed, but, in its final draft, H. J. R. No. 2 is never published at length. H. J. R. No. 2, therefore, could not have been correctly printed on the 14th as claimed in the history, it not having been in its correct final draft until, at least, the 20th, but, officially, not until the 21st. Since there is no record, either on the House journal or on the history attached to the archival copy of H. J. R. No. 2, of any printing of the final draft of H. J. R. No. 2, that resolution could not have been correctly printed on the 14th. This failure to print the resolution was a Constitutional violation. The history was a fraud.

On the 24th of January, another message was transmitted to the Senate from the House announcing the passage of H. J. R. No. 2—

> I am directed by the House to inform your Honorable Body that . . . House Joint Resolution No. 2, (has) this day been read a third time and passed, and is herewith transmitted for your concurrence. (SJ at 187)

H. J. R. No. 2 was then introduced in the Senate, again, and read the first and second times, again, and referred to the Committee on Federal Relations, again. (SJ at 188) This re-execution of the legislative process was proper procedure for the re-enactment of a bill or resolution that had been amended, or that part of it which had been amended.

On the 27th, H. J. R. No. 2 was, again, favorably reported out of committee with the following result—

> On motion of Leary, seconded by McCone, report adopted, and House Joint Resolution No. 2 referred to General File. (SJ at 208)

The Committee of the Whole also reported favorably on H. J. R. No. 2. (SJ at 214) H. J. R. No. 2 was then referred to the calendar for its third reading. (SJ at 214) That third reading was set for the same day and was taken up for a vote—

> H. J. R. No. 2, having been read three several times at length, was concurred in by the following vote:
> Ayes- . . . -25.
> Noes: . . . -1.
> Absent and not voting- . . . 2.
> Title agreed to. (SJ at 214)

Later that day, H. J. R. No. 2 was returned to the House. (HJ at 253) On the last day of

the month, H. J. R. No. 2 was reported properly enrolled. This journal entry is missing from the history attached to the archival history. (HJ at 297)

The following then took place on the 31st—

> Mr. Speaker at this time announced that he was about to sign House Joint Resolution No. 2, a Joint Resolution ratifying the Sixteenth Amendment of the Constitution of the United States, and signed same in the presence of the House. (HJ at 300)

Similarly, on the same day in the Senate, the following took place—

> The President announced that he was about to sign . . . House Joint Resolution No. 2, and same (was) signed in open session. (SJ at 245)

The signing by the President of the Senate was followed by a message from the House—

> I am directed by the House to inform your Honorable Body that Mr. Speaker has this day signed in the presence of the House, House Joint Resolution No. 2 . . . . (SJ at 260)

There is no record of the public reading of the title of H. J. R. No. 2 in the Senate prior to its signing by the President. A failure to publicly read the title was a violation of Article V, Section 27 of the Montana State Constitution which provided that—

> The presiding officer of each house shall, in the presence of the house over which he presides, sign all the bills and joint resolutions passed by the legislative assembly immediately after their titles have been publicly read, and the fact of signing shall be at once entered upon the journal.

H. J. R. No. 2 was then transmitted to the Governor by the Committee on Enrollment. (HJ at 308) The Governor then sent the following message back to the House—

> I have this day approved and deposited with the Secretary of State the following House Bills and Resolution:
>
> * * *
>
> H. J. R. No. 2—A Joint Resolution ratifying the Sixteenth Amendment of the Constitution of the United States.
>
> (Signed:) EDWIN L. NORRIS,
> Governor.

On February 3rd, 1911, Governor Norris transmitted an unsigned copy of H. J. R. No. 2 to Philander Knox, the Secretary of State of the United States. The text of H. J. R. No. 2 as received by Washington was as follows—

House Joint Resolution No. 2

> Whereas, both houses of the sixty-first congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the constitution of the United States of America, in the following words, to-wit:
>
> "A joint resolution proposing an amendment to the constitution of the United States,"
>
> "Resolved, by the senate and house of representatives of the United States of America in Congress assembled (twothirds of each House concurring therein),

that the following article is proposed as an amendment to the constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution, namely,

Article XVI. The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."

Therefore, be it resolved by the senate and house of representatives of the State of Montana, that the said proposed amendment to the Constitution of the United States be, and the same is hereby, ratified by the general assembly of the State of Montana.

And, further be it resolved, that certified copies of this joint resolution be forwarded by the governor of this state to the secretary of state at Washington and to the presiding officers of each house of the national congress.

W. W. McDowell
Speaker of the House.
W. R. Allen
President of the Senate.
Approved January 31, 1911.
Edwin L. Norris
Governor.
Filed January 31, 1911.
A. N. Yoder
Secretary of State.

Accompanying the copy of H. J. R. No. 2 was a certificate from A. N. Yoder which stated the following—

> I, A. N. Yoder, Secretary of State of the State of Montana, do hereby certify that the above is a true and correct copy of House Joint Resolution No. 2, ratifying the Sixteenth Amendment to the Constitution of the United States, enacted by the Twelfth Session of the Legislative Assembly of the State of Montana, and approved by Edwin L. Norris, Governor of said State, on the thirty-first day of January, 1911.

The resolution, as transmitted, contained the following changes to the official Congressional Joint Resolution—

1. the preamble was modified

a. the words "Senate," "House," "Representatives," "That," "States," and both instances of the word "Constitution" were changed to common nouns

b. the colon after the second instance of the word "Constitution" was changed to a comma

c. the word "namely" was added to end of the preamble along with an additional comma

2. the words "Congress" and "States" were changed to common nouns

Each such change to the official Congressional Joint Resolution represented a violation of the duty of the Montana Legislature to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

The purported ratification by the Montana Legislature of the proposed Sixteenth Amendment was defective for the following reasons—

1. Lack of jurisdiction of the certified copy of the Congressional Joint Resolution

2. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that H. J. R. No. 2 contained the following changes to the official Congressional Joint Resolution—

a. the preamble was modified

i. the words "Senate," "House," "Representatives," "That," "States," and both instances of the word "Constitution" were changed to common nouns

ii. the colon after the second instance of the word "Constitution" was changed to a comma

iii. the word "namely" was added to end of the preamble along with an additional comma

b. the words "Congress" and "States" were changed to common nouns

3. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

4. Violation of Article V, Section 22 of the Montana State Constitution in failing to correctly print the final draft of H. J. R. No. 2

5. Violation of Article V, Section 27 of the Montana State Constitution in failing to publicly read the title of H. J. R. No. 2 just prior to its signing in the Senate

This last omission in the record was not corrected, nunc pro tunc, though the opportunity existed to do so in a message from the Senate to the House on February 13th

> I am directed by the Senate to inform your Honorable Body that through an omission to notify the House of the signing of Bills by the President in open Session, are herewith corrected by supplying list of omissions, giving date of signature of President, viz:
>
> * * *
>
> January 31st, 1911, . . . House Joint Resolution No. 2. (HJ at 495)

Indiana—February 6th, 1911

On July 29th, 1909, a letter from Thomas R. Marshall, Governor of Indiana, acknowledging receipt of the certified copy of the Congressional Joint Resolution, was sent to Philander Knox, Secretary of State of the United States, which stated the following—

> Permit me to say that upon the convening of the General Assembly of the State of Indiana, the same will be submitted to it for its action and you will be duly notified of the result thereof.

At the opening session of the next Indiana General Assembly, January 5th, 1911, the Governor delivered his address which included the following remarks about the proposed Sixteenth Amendment—

> The congress of the United States has proposed to the several States as an amendment to the federal Constitution what is known as the income tax amendment. It is manifestly a correct principle of law that those whose property is safeguarded and who are enabled to profitably pursue business enterprise, should contribute proportionately out of their success to the support of the government. **In accordance with the resolution of congress I submit to you herewith that proposed amendment.** Its language does not strictly conform to my own views of expression and **it may be conferring upon the general government a larger power in the nature of taxation than the States have ever intended to confer,** but it is along the right line and I recommend its ratification. (HJ at 27) (emphasis added)

After expressing his opinion that the proposed amendment might confer a larger power to tax "than the States have ever intended," the Governor then performed his duty "in accordance with the resolution of (C)ongress" by submitting a copy of the Congressional Joint Resolution to the Indiana Legislature—

> I beg leave to submit herewith a certified copy of the resolution of congress entitled, "Joint resolution proposing an amendment to the Constitution of the United States" received from the department of state at Washington, together with a copy of the form of ratification resolution used by those states which have acted favorably upon the resolution, which form was transmitted to me by Senator Brown of Nebraska. (HJ at 37)

On January 10th, two separate ratification resolutions were introduced in the House, Joint Resolution No. 2, by Mr. Corr and Joint Resolution No. 4, by Mr. Merriman, both of which were read a first time and referred to the Committee on Judiciary. (HJ at 61 & 63)

In the Senate, the same day on which the foregoing resolutions were introduced in the House, the following resolution was introduced in the Senate—

Senator Stotsenburg offered Joint Resolution No. 1, entitled:

A Joint Resolution ratifying the sixteenth amendment to the Constitution of the United States.

Whereas: Both Houses of the Sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to wit:

A Joint Resolution proposing an amendment to the Constitution Of The United States.

Resolved, By the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of each House concurring therein, that the following article is proposed as an amendment to the Constitution of the United States which, when ratified by the Legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution, namely:

Article sixteen: "The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." Therefore, be it

Resolved, By the Senate and House of Representatives of the State of Indiana: That the said proposed amendment to the Constitution of the United States, be, and the same is, hereby ratified by the General Assembly of the State of Indiana, and further, be it

Resolved, That certified copies of this Joint Resolution be forwarded by the Governor of this State to the Secretary of State at Washington, D. C., and to the presiding officers of each House of the National Congress. (SJ at 56)

Although no record appears in the journal of the referral of Joint Resolution No. 1 to committee, that resolution was reported favorably out of the Committee on Constitutional Revision and that report was adopted. (SJ at 90) On the 16th of January, S. J. R. No. 1 was taken up and read a second time by title only and then ordered engrossed. (SJ at 114) This second reading by title only was a violation of Article IV, Section 18 of the Indiana State Constitution which provided that—

> Every bill shall be read, by sections, on three several days, in each House; unless, in case of emergency, two-thirds of the House where such bill may be depending, shall, by a vote of yeas and nays, deem it expedient to dispense with this rule; but the reading of a bill, by sections, on its final passage, shall, in no case, be dispensed with; and the vote on the passage of every bill or joint resolution shall be taken by yeas and nays.

On the 17th, S. J. R. No. 1 was taken up for final passage after it was engrossed—

Senator Stotsenburg called up Engrossed Senate Joint Resolution No. 1.

Engrossed Senate Joint Resolution No. 1, entitled:

A Joint Resolution ratifying the sixteenth amendment to the Constitution of the United States.

Which bill was read a third time by sections and put upon its passage.

The question being, Shall the resolution pass?

The roll was called.

Those voting in the affirmative were . . .

. . . Total, 48.

Those voting in the negative were . . .

. . . Total, 1.

So the resolution passed.
The question being, Shall the title of the resolution stand as the title of the act?
It was so ordered. (SJ at 125)

On January 26th, without previous journal references in the House journal, S. J. R. No. 1 appears as favorably reported out of the Committee on Judiciary. That report was adopted, and, then, the resolution was read a second time and ordered to a third reading. (HJ at 597) Neither of these readings was by sections, again, a violation of Article IV, Section 18 of the Indiana State Constitution. A first reading is not apparent.

On the 30th, S. J. R. No. 1 was taken up for consideration on final passage with the following result—

The Speaker handed down Engrossed Senate Joint Resolution No. 1, which was read a third time.
The question being, Shall the joint resolution pass?
The Speaker ordered the roll of the House to be called.
Those voting in the affirmative were . . .
. . . Total, 93.
None voting in the negative.
So the joint resolution passed. (HJ at 658)

The next day, the 31st, the following message was received by the Senate from the House—

I am directed by the House to inform the Senate that the House has passed Engrossed Senate Joint Resolution No. 1, and the same is herewith returned to the Senate for further action.
C. J. McCULLOUGH,
Principal Clerk of the House. (SJ at 653)

On February 6th, a message was received from Governor Marshall, through his Secretary, informing the Senate that he had approved Senate Engrossed Joint Resolution No. 1, and had deposited the same with the Secretary of State. The Secretary of the Senate was, then, ordered to notify the House of the action of the Governor. (SJ at 795) (HJ at 814)

On February 18th, the House Committee on Judiciary recommended that H. J. R. No. 4 be indefinitely postponed. That report was adopted and H. J. R. No. 4 was indefinitely postponed. (HJ at 1281)

On February 9th, 1911, the following document was received in Washington, D. C. at the Department of State—

ENROLLED JOINT RESOLUTION NO. 1, SENATE.
A joint resolution ratifying the sixteenth amendment to the Constitution of the United States.
WHEREAS, Both houses of the Sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, towit:
"A joint resolution proposing an amendment to the Constitution Of The United States.
"Resolved, By the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following article is proposed as an amendment to the Constitution of the

United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution, namely:

Article XVI—The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration"; therefore, be it

Resolved, By the Senate and House of Representatives of the State of Indiana, That the said proposed amendment to the Constitution of the United States be, and the same is hereby, ratified by the General Assembly of the State of Indiana; and, further, be it

Resolved, That certified copies of this joint resolution be forwarded by the governor of this State to the secretary of state at Washington and to the presiding officers of each house of the national Congress.

Albert J. Veneman,
Speaker of the House of Representatives.
Frank J. Hall,
President of the Senate.
"Approved February 6," 1911,
Thos. R. Marshall,
Governor of the State of Indiana.
UNITED STATES OF AMERICA,
STATE OF INDIANA, SS:

I, Thomas R. Marshall, Governor of the State of Indiana, do hereby certify that the above is a full, true, complete and accurate copy of ENROLLED JOINT RESOLUTION NO. 1, duly passed by both the Senate and House of Representatives of the State of Indiana in General Assembly now in session in accordance with the Constitution of the State of Indiana; that the same has been passed strictly in conformity to the laws of the State of Indiana, has been duly approved by me, and as by law required, deposited with the Secretary of State of the State of Indiana. This certificate executed in accordance with said JOINT RESOLUTION in triplicate.

IN TESTIMONY WHEREOF, I have hereunto affixed my hand as the Governor of the State of Indiana and attached the GREAT SEAL of said State, at the Capitol in the City of Indianapolis, in the year of our Lord, one thousand nine hundred and eleven, and of the Declaration of Independence, the one hundred and thirty fifth.

(SEAL)
(Signed)
Governor.
By the Governor:
(Signed)
Secretary of State.

In the official publication *LAWS OF THE STATE OF INDIANA*, PASSED AT THE SIXTY-SEVENTH REGULAR SESSION OF THE GENERAL ASSEMBLY, 1911, S. J. R. No. 1 is reproduced as follows—

A JOINT RESOLUTION ratifying the sixteenth amendment to the Constitution of the United States.

[S. 1. Joint Resolution. Approved February 6, 1911.]

Taxation-Income.

WHEREAS, Both houses of the sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States

of America in the following words, towit:

"A joint resolution proposing an amendment to the Constitution of The United States.

"**Resolved,** By the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution, namely: "Article XVI—The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration"; therefore, be it

Resolved, By the Senate and House of Representatives of the State of Indiana, That the said proposed amendment to the Constitution of the United States be, and the same is hereby, ratified by the General Assembly of the State of Indiana; and, further, be it

Resolved, That certified copies of this joint resolution be forwarded by the governor of this State to the secretary of state at Washington and to the presiding officers of each house of the national Congress.

Albert J. Veneman,
Speaker of the House of Representatives.
Frank J. Hall,
President of the Senate.
"Approved February 6," 1911,
Thos. R. Marshall,
Governor of the State of Indiana.
UNITED STATES OF AMERICA,
STATE OF INDIANA, SS:

I, Thomas R. Marshall, Governor of the State of Indiana, do hereby certify that the above is a full, true, complete and accurate copy of ENROLLED JOINT RESOLUTION NO. 1, duly passed by both the Senate and House of Representatives of the State of Indiana in General Assembly now in session in accordance with the Constitution of the State of Indiana; that the same has been passed strictly in conformity to the laws of the State of Indiana, has been duly approved by me, and as by law required, deposited with the Secretary of State of the State of Indiana. This certificate executed in accordance with said JOINT RESOLUTION in triplicate.

IN TESTIMONY WHEREOF, I have hereunto affixed my hand as the Governor of the State of Indiana and attached the GREAT SEAL of said State, at the Capitol in the City of Indianapolis, in the year of our Lord, one thousand nine hundred and eleven, and of the Declaration of Independence, the one hundred and thirty fifth.

(Signed)
Governor.
By the Governor:
(Signed)
Secretary of State.

It is evident by comparing the text of the two documents that they are alike except that the first instance of the word "state" in the Washington text was changed to "State" in the published text. The enrolled original of S. J. R. No. 1 is quite another story. The text of that document is as follows—

A JOINT RESOLUTION RATIFYING THE SIXTEENTH AMENDMENT

TO THE CONSTITUTION OF THE UNITED STATES.

Whereas, both houses of the Sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, towit (sic):

"A joint resolution proposing an amendment to the Constitution Of The United States.

"Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each house concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution, namely, Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."

Therefore, be it resolved by the Senate and House of Representatives of the State of Indiana, That the said proposed amendment to the Constitution of the United States of America be, and the same is hereby, ratified by the general assembly of the State of Indiana.

And, further be it resolved, That certified copies of this joint resolution be forwarded by the Governor of this State to the Secretary of State at Washington and to the presiding officers of each house of the national Congress.

The following are changes made to the enrolled original of S. J. R. No. 1 in the copy sent to Washington—

1. the word "both" was changed to "Both"
2. the word "Sixty-first" was changed to "sixty-first"
3. the second instance of the word "by" was changed to "By"
4. the word "That" following the parenthetic phrase was changed to "that"
5. the word "Constitution" at the end of the Congressional preamble was changed to a common noun
6. the comma following the word "namely" was changed to a colon
7. the designation "Article XVI." was changed to "Article XVI "—
8. the period at the end of the proposed amendment was changed to a semicolon
9. the resolves following the proposed amendment were appended to the proposed amendment by virtue of the change of the period in the proposed amendment to a semicolon
10. the word "Therefore" following the proposed amendment was changed to "therefore"
11. the phrase "Therefore, be it" was removed from the resolve following the proposed amendment
12. the word "resolved" was changed to "Resolved"
13. a comma was inserted following the word "Resolved" referenced in number 12.
14. the word "by" following the word "Resolved" referenced in number 12 was changed to "By"
15. the phrase "general assembly" was changed to "General Assembly"
16. the period at the end of the first State resolve was changed to a semicolon
17. the phrase "And, further be it" was removed from the second State resolve and appended to the first

18. the second instance of the word "resolved" was changed to "Resolved"
19. the word "Governor" was changed to a common noun
20. the word "State" following the word "governor" was changed to a common noun
21. the phrase "Secretary of State" was changed to "secretary of state"

The enrolled original was, of course, the text which was passed by the Legislature of Indiana. The text sent to Washington, to which the Governor so forcefully swore, was not the text which was passed by the Legislature of Indiana. The text sent to Washington was fraudulent. Once all the changes had been made to S. J. R. No. 1 in the document sent to Washington, the transcription which was published in the *LAWS OF THE STATE OF INDIANA* was the same except for one change.

In the archival enrolled original of S. J. R. No. 1 the following changes were made to the official Congressional Joint Resolution—

1. the designation "Article XVI." was appended to the preamble by virtue of the change of the colon at the end of the preamble to a comma
2. the word "States" was changed to a common noun

Such changes were in violation of the duty which the Indiana Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his letter of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

Finally, S. J. R. No. 1 was in violation of Article IV, Section 17 which provided that—

> . . . bills for raising revenue shall originate in the House of Representatives.

Senate Joint Resolution No. 1, of course, originated in the Senate.

Thus, the purported ratification of the proposed Sixteenth Amendment by the Legislature of the State of Indiana was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. R. No. 1 contains the following changes from the official Congressional Joint Resolution—

a. the designation "Article XVI." was appended to the preamble by virtue of the change of the colon at the end of the preamble to a comma

b. the word "States" was changed to a common noun

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878 in that the document transmitted to Washington was fraudulent

3. Violation of Article IV, Section 18 of the Indiana State Constitution in the failure of both the Senate and the House to properly read S. J. R. No. 1 by sections on three different days

4. Violation of Article IV, Section 17 of the Indiana State Constitution in that S. J. R. No. 1 originated in the Senate and not the House, as required

Nevada—February 8th, 1911

On July 31st, 1909, the Secretary to the Governor of Nevada, wrote a letter to Philander Knox, Secretary of State of the United States, which revealed the following—

> In the absence of the Governor, I have the honor to acknowledge receipt of yours of 26th instant enclosing a certified copy of a Resolution of Congress, entitled "Joint Resolution Proposing an amendment to the Constitution of the United States," . . . and to state that the matter will receive the attention of the Governor upon his return to Carson City.

On January 16th, 1911, Tasker L. Oddie, Governor of Nevada, delivered his address to the Legislature. He urged the abolition of the mortgage tax and real estate tax relief. He did not mention the Sixteenth Amendment nor did he transmit the certified copy to the Legislature.

Without having had the Governor of Nevada officially submit the certified copy of the Congressional Joint Resolution to the Legislature, Assemblyman Bulmer introduced the following on January 17th, 1911—

> Joint and Concurrent Resolution No. 1-Assembly Joint and Concurrent Resolution ratifying the sixteenth amendment to the Constitution of the United States of America.

Action was taken immediately upon that resolution—

> On motion of Mr. Bulmer, duly seconded, the reading had was considered the first reading, the rules suspended, read second time by title, and referred to the Committee on Judiciary. (AJ at 7)

Article IV, Section 18 of the Nevada Constitution provides that—

> Every bill shall be read by sections on three several days in each house, unless, in case of emergency, two-thirds of the house where such bill may be pending shall deem it expedient to dispense with this rule; but the reading of a bill by sections, on its final passage, shall in no case be dispensed with, . . .

The Nevada Legislature violated this provision of their State Constitution no less than four times on the 17th in the following manner—

1. there was no declared emergency, and no two-thirds vote to support such a declaration and, thus, there could not be a valid suspension of the rules
2. the first reading was not by sections
3. the second reading was not by sections
4. the second reading was on the same day as the supposed first reading

One week later, A. J. & C. R. No. 1 was taken up for a final vote—

Assembly Joint and Concurrent Resolution No. 1.
Rules suspended, resolution considered engrossed, placed upon its third reading and final passage, and passed by the following vote:
Yeas- . . . -46
Nays-None
Absent, 4. (AJ at 33)

In this action, the Nevada Legislature violated their State Constitution again—

1. there was no declared emergency, and no two-thirds vote to support such a declaration and, thus, there could not be a valid suspension of the rules
2. the third reading was not by sections
3. the third reading was dispensed with ("placed upon" third reading, not read)

In addition, the resolution was never printed in its final draft. It was merely "considered engrossed."

Having taken up A. J. & C. R. No. 1 in such a way that they considered it passed, the Assembly sent the Senate the following information by messenger on the 25th—

> I have the honor herewith to return to your honorable body . . . Assembly Joint and Concurrent Resolution (No). 1, which this day passed the Assembly by the following vote: Yeas, 45; nays, none; absent, 4. (SJ at 27)

Shortly thereafter, the Senate took up that resolution—

> Assembly Joint and Concurrent Resolution (No). 1, ratifying the sixteenth amendment to the Constitution of the United States of America.
> On motion of Senator Tannahill, the rules were suspended, reading so far had considered first reading rules further suspended, resolution read second time by title, and referred to Committee on Judiciary. (SJ at 27)

In the same manner as the Assembly had done, the Senate violated their State Constitution—

1. there was no declared emergency, and no two-thirds vote to support such a declaration and thus there could not be a valid suspension of the rules
2. the first reading was not by sections
3. the second reading was not by sections
4. the second reading was on the same day as the supposed first reading

On the 31st of January, A. J. & C. R. No. 1 was reported favorably out of committee. (SJ at 36) Later, that same day, it was taken up for a vote—

> Assembly Joint and Concurrent Resolution No. 1.
> Placed on third reading and final passage, and passed by the following vote:
> Yeas- . . . -18.
> Nays-None.
> Absent-Senator Tallman. (SJ at 39)

This time there was no claim of the suspension of the rules, however, the State Constitution was violated again by the action of the Senate—

1. the third reading was not by sections
2. the third reading was dispensed with

On the 2nd of February, the Senate sent a message of concurrence back to the Assembly—

> I have the honor herewith to return to your honorable body Assembly Joint

and Concurrent Resolution No. 1, which passed the Senate this day by the following vote: Yeas, 18; nays, none; absent, 1; vacant, 1. (AJ at 65)

On the 7th, A. J. & C. R. No. 1 was found correctly enrolled, not with an engrossed copy, or final draft, but "with the engrossed **copies**," that is, more than one final draft existed. It was also recorded that the resolution, as enrolled from the several copies, was delivered to the Governor. (AJ at 83)

In neither house of the Nevada Legislature was A. J. & C. R. No. 1 ever signed in violation of Article IV, Section 18 of the State Constitution, which provided that—

> . . . all bills or joint resolutions so passed shall be signed by the presiding officers of the respective houses, and by the secretary of the senate and clerk of the assembly.

On February 9th, the following entry was made on the Senate journal—

> Assembly Joint and Concurrent Resolution No. 1, ratifying the sixteenth amendment to the Constitution of the United States of America.
>
> On motion of Senator Tallman, the rules were suspended, reading so far had considered first reading, rules further suspended, resolution read second time by title, and referred to Committee on Judiciary. (SJ at 65)

There should have been, of course, absolutely no reason for such an entry in this journal had A. J. & C. R. No. 1 actually properly passed the Nevada Senate on January 31st as recorded.

There is no record of the text of A. J. & C. R. No. 1 in the journals. The copy sent to Washington was unsigned and, furthermore, there isn't even an indication that it was signed. That copy of the resolution reads—

> ASSEMBLY JOINT AND CONCURRENT RESOLUTION, RATIFYING THE SIXTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA. (Approved February 8, 1911).
>
> WHEREAS, Both houses of the sixty-first congress of the United States of America at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the constitution of the United States of America in the following words, to wit:
>
> A JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.
>
> Resolved By the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution, namely:
>
> Article XVI. The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states and without regard to any census or enumeration.
>
> Therefore be it
>
> RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CONCURRING, That the said proposed amendment to the constitution of the United States be, and the same is hereby, ratified by the legislature of the State of Nevada.
>
> That certified copies of this preamble and joint and concurrent resolution be forwarded by the governor of this state to the president of the United States,

secretary of state of the United States, to the presiding officer of the United States senate, and to the speaker of the United States house of representatives.

Accompanying this copy of A. J. & C. R. No. 1 was a certificate purportedly from George Brodigan, the Secretary of State of Nevada, but signed by George W. Cowing, the Deputy Secretary. That certificate alleged the following (See Appendix) —

> I, GEORGE BRODIGAN, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the original copy of ASSEMBLY JOINT AND CONCURRENT RESOLUTION, RATIFYING THE SIXTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA (Approved February 8, 1911) now on file and of record in this office. (emphasis added)

According to the rules of evidence, a copy may not be introduced into evidence until the original is accounted for. This certificate only claims that the copy sent to Washington is a copy of an original copy, not of the original. The copy sent to Washington is, thus, void on two separate counts—

1. it is not signed
2. it is not a copy of the original

Additionally, the archival copy of A. J. & C. R. No. 1 cannot be found in Nevada. (see letter 3/1/85)

In any event, this resolution is invalid because of the following changes which were made to the original and official Congressional Joint Resolution—

1. the preamble was modified—

a. the word "the" was added before the word "House"

b. the word "States" was changed to a common noun as were both instances of the word "Constitution"

c. a comma was added after the second instance of the word "constitution"

d. the word "namely" was added after the second instance of the word "constitution"

2. the word "Congress" and the word "States" were changed to common nouns
3. the comma following the word "states" was deleted

Finally, Article X, Section 1, of the Nevada State Constitution provides that—

> The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory . . .

A. J. & C. R. No. 1 did not provide nor guarantee any such "uniform and equal rate of assessment and taxation" nor did it allow the Nevada Legislature to "prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory . . ."

Thus, the Legislature of the State of Nevada committed a great many violations of procedure in their defective ratification of the proposed Sixteenth Amendment—

1. Lack of jurisdiction of the certified copy of the Congressional Joint Resolution
2. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that the copy of A. J. & C. R. No. 1 included the following changes to the official Congressional Joint Resolution—

a. the preamble was modified—

i. the word "the" was added before the word "House"

ii. the word "States" was changed to a common noun as were both instances of the word "Constitution"

iii. a comma was added after the second instance of the word "constitution"

iv. the word "namely" was added after the second instance of the word "constitution"

b. the word "Congress" and the word "States" were changed to common nouns

c. the comma following the word "states" was deleted

3. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

4. Violations of the Nevada State Constitution—

a. there was no declared emergency, and no two-thirds vote to support such a declaration and thus there could not be a valid suspension of the rules in the House on the 17th of January

b. the first reading was not by sections in the House

c. the second reading was not by sections in the House

d. the second reading was on the same day as the supposed first reading in the House

e. there was no declared emergency, and no two-thirds vote to support such a declaration and thus there could not be a valid suspension of the rules in the House on the 24th

f. the third reading was not by sections in the House

g. the third reading was dispensed with in the House

h. there was no declared emergency, and no two-thirds vote to support such a declaration and thus there could not be a valid suspension of the rules in the Senate on the 25th

i. the first reading was not by sections in the Senate

j. the second reading was not by sections in the Senate

k. the second reading was on the same day as the supposed first reading in the Senate

l. the third reading was not by sections in the Senate

m. the third reading was dispensed with in the Senate

All the above a.-m. were in violation of Article IV, Section 18

n. the resolution on the proposed Sixteenth Amendment did not provide nor guarantee a "uniform and equal rate of assessment and taxation" in violation of Article X, Section 1

o. the resolution on the proposed Sixteenth Amendment did not allow the Nevada Legislature to "prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory . . ." in violation of Article X, Section 1

5. A. J. & C. R. No. 1 was never printed in its final draft, having been merely "considered engrossed" and the enrollment was performed using several engrossments, or final drafts, making it clear that any number of drafts were being used in the legislative process.

North Carolina—February 11th, 1911

In the biennial message to the Legislature, delivered January 5th, 1911, the Governor of the State of North Carolina, W. W. Kitchin, addressed the proposed Sixteenth Amendment.

First, he took care of his ministerial duty by properly transmitting a copy of the Congressional Joint Resolution to the North Carolina Legislature, that copy having been appended in the record at the end of the Governor's message. He then proceeded to state the reasons for his recommendation of ratification.

The Governor believed that an income tax was "eminently just and equitable, placing a portion of the burden of government upon those most able to bear it." And who were these proposed bearers of the proposed income taxes for whom the Governor felt such a tax "could not reasonably be considered a hardship?" Those in his State, as well as those across the nation, who were in "the wealthy classes" and who were "the great business men" were intended to be the ones upon whom this new tax burden would fall.

Kitchin's belief was based upon his assessment that "under the present system the great bulk of revenues to support the United States . . . is derived from taxes on . . . what the people consume" and, thus, according to Kitchin, "(t)he immensely wealthy individual" ordinarily would pay "no more taxes to the Federal Government than the citizen working for his daily wage." Kitchin posited that "(t)he income tax justly levied would do much to properly equalize the cost of the Federal Government, and would . . . lessen the burden upon the great masses on whom the present indirect taxes bear heavily and who are least able to pay."

While Kitchin understood that "[t]he power to tax [is] the power to destroy" and made it clear that, in his opinion, "the sovereignty of the State" would not be "impaired by the imposition of taxes upon its agencies without its consent," and that "[t]he fear expressed in some quarters that the Congress under this amendment would burden State obligations should be completely allayed," Governor Kitchin never expressed any fear whatsoever that Congress would ever burden "the great masses" with this income tax, apparently, because he "assume[d]" and "presume[d]" that the tax burden would be levied justly. Besides, Governor Kitchin felt that if the income tax were only 2 per cent, such a small tax would harm no one, not even a less well-to-do individual.

In any event, the Governor made it perfectly clear to the Legislature that a tax burden would fall upon at least some of the citizens of the State of North Carolina, and because of this message and because of the clear intent of the amendment to give Congress the means to "lay and collect" a tax, the legislators of North Carolina were bound to obey Article II, Section 14 of the Constitution of the State of North Carolina which provided

that—

> No law shall be passed . . . **to impose any tax upon the people of the State** . . . unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and agreed to by each house, respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal.

On the 6th of January, 1911, the following was introduced and read the first time—

> By Senator Barnes, S. R. 23, resolution ratifying the Sixteenth Amendment to the Constitution of the United States. (SJ at 13)

S. R. 23 was then referred to the Committee on Constitutional Amendments and eleven days later, on the 17th, S. R. 23 was favorably reported out of committee. (SJ at 60) S. R. 23 was then put before the Senate for its second reading, however, a successful motion delayed that reading until "January 20, at 11:30 o'clock." (SJ at 64)

On the 20th, another motion delayed the second reading until the 24th. (SJ at 87) On the 24th, the following took place—

> It being a special order for this hour, the President lays before the Senate S. R. 23, resolution ratifying the Sixteenth Amendment to the Constitution of the United States, upon second reading.
>
> Senator Bassett moves the previous question and calls for ayes and noes.
>
> The motion is adopted.
>
> The resolution passes second reading, ayes 41, noes one, as follows . . .

The result of the roll call on the second reading was then recorded in the journal. (SJ at 106) Immediately after the roll call on the second reading was recorded, the Senate then proceeded to violate the provisions of Article II, Section 14 of their State Constitution—

> The resolution passes third reading, and, on motion of Senator Barnes, is ordered sent to the House of Representatives by special messenger. (SJ at 106)

Two violations of the North Carolina Constitution occurred here—one, the third reading was had on the same day as the second reading and, two, the yeas and nays on the third reading were not recorded. Document No. 240 of the United States Senate of the 71st Congress (See Appendix) states that only the ayes and noes on the previous question were recorded and that the third reading was "without a record vote." At that time, the North Carolina House journal was unavailable for study.

S. R. 23 became designated "S. R. 23, H. R. 422" as introduced in the House on the 24th and was read for the first time and referred to the Committee on Constitutional Amendments. (HJ at 146)

A week later, on the 31st, S. R. 23, H. R. 422 was substituted for House Bill 9 in the following manner—

> The hour for the special order having arrived, the Speaker lays before the House H. B. 9, a bill to be entitled An act to ratify the amendment proposed to the Constitution of the United States, Article XVI, levying and collecting taxes on incomes.
>
> Mr. Ewart sends forward an amendment.
>
> Mr. Ray moves that consideration of the bill be postponed until action is had

by the House Committee on S. R. 23, H. R. 422, a joint resolution ratifying the Sixteenth Amendment to the Constitution of the United States.

On motion of Mr. Doughton, the above-cited resolution, S. R. 23, H. R. 422, is withdrawn from the Committee on Constitutional Amendments, and is placed on the Calendar, and the same is made a substitute for the pending bill and the offered amendments.

The original resolution is laid on the table.

The question recurs upon the passage of the substitute. Upon this Mr. Ray calls for the ayes and noes. Call sustained.

The resolution passes its second reading by the following vote, and takes its place on the Calendar.

The vote on the second reading of S. R. 23 was 93 in the affirmative, 6 in the negative. (HJ at 210)

The text of H. B. 9 was as follows—

House Bill 9, 1911, "An Act to Ratify the Amendment Proposed to the Constitution as Article XVI, Levying and Collecting Taxes on Income."

AMENDMENTS TO HOUSE BILL #9.

In the clause headed "That the said Amendment be ratified, &c" on the last page, strike out the words "Hon. James S.Sherman, Vice-President of the United States and President of the Senate, and to Hon. Joseph G.Cannon, Speaker of the House of Representatives" and insert "presiding officers of the United States Senate and House of Representatives."

In the same clause as above add after the words "House of Representatives" in the last line, the following, "and that a certified copy be sent by the Secretary of State of North Carolina to the Secretary of State of the United States."

Whereas the 61st Congress of the United States of America at the 1st session begun and held at the City of Washington on Monday the 15th day of March one thousand nine hundred and nine adopted the following joint resolution proposing an amendment to the Constition (sic) of the United States, viz:

"Sixty-first Congress of the United States of America.

At the First Session.

Begun & held at the City of Washington on Monday the fifteenth of March one thousand, nine hundred and nine.

JOINT RESOLUTION.

Proposing an amendment to the Constitution of the United States:

Resolved by the Senate & House of Representatives of the United States of America in Congress assembled (two thirds of each House concurring therein). That the following article is proposed as an amendment to the Constitution of the United States, which when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents, & purposes as a part of the Constitution,

Article XVI.

The Congress shall have power to lay & collect taxes on incomes from whatever source derived without apportionment among the several States, & without regard to any census or enumeration.

And whereas the ratification of this amendment is vital to the safety and security of the Republic in time of need, is without danger in the power conferred, and is in the interest of a just and equitable method of taxation therefore;

The General Assembly

of North Carolina do enact,

That the said Amendment be ratified, and that a copy of this Act be transmitted to the Hon. John S. Sherman Vice President of the United States and President of

the Senate, and to Hon. Joseph G. Cannon, Speaker of the House of Representatives

The text of H. R. 422, S. R. 23 as received in Washington, D. C. reads—

H. R. 422
S. R. 23

A joint resolution ratifying the sixteenth amendment to the Constitution of the United States.

Whereas, both the houses of the sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States, to wit:

"A joint resolution proposing an amendment to the Constitution of the United States.

"Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein) that the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution, namely, Article sixteen." The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."

Therefore be it resolved by the Senate and House of Representatives of the State of North Carolina, that the said proposed amendment to the Constitution of the United States be and the same is hereby ratified by the General Assembly of the State of North Carolina.

And further be it resolved, that certified copies of this joint resolution be forwarded by the Governor of this State to the Secretary of State at Washington and to the presiding officer of each house of the National Congress.

In the General Assembly read three times and ratified. this the 11th day of February, 1911.

However, the published version of the resolution of the North Carolina Legislature purportedly ratifying the Sixteenth Amendment reads—

RESOLUTION NO. 11

A JOINT RESOLUTION RATIFYING THE SIXTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Whereas both the houses of the Sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States, to wit:

"A JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

"**Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled** (two-thirds of each House concurring therein): That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution, namely, article sixteen: 'The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.'

"**Therefore be it resolved, by the Senate and House of Representatives of the State of North Carolina,** That the said proposed amendment to the Constitution

of the United States be and the same is hereby ratified by the General Assembly of the State of North Carolina."

And further be it resolved, That certified copies of this joint resolution be forwarded by the Governor of this State to the Secretary of State at Washington and to the presiding officers of each house of the National Congress.

Ratified this the 11th day of February, A. D. 1911.

Though Resolution No. 11 is similar to the archival original of H. R. 422, S. R. 23, Res. No. 11 is not the same as H. R. 422, S. R. 23. There are a total of seventeen discrepancies between the two. There are a total of nine discrepancies between the archival original of H. R. 422, S. R. 23 and the copy sent to Washington. In all three cases, the amendment was changed. In the archival original of H. R. 422, S. R. 23, the following changes to the official Congressional Joint Resolution are evident—

1. the preamble was modified
2. the comma following the word "incomes" was deleted
3. the Roman numeral "XVI" was changed to "sixteen"
4. the phrase "Article sixteen." was made a part of the preamble
5. the word "States" was changed to a common noun

In Resolution No. 11, the designation "Article XVI." has been changed to "article sixteen:" and made a part of the previous sentence and the comma following the word "incomes" was deleted. In the copy of S. R. 23 transmitted to Washington, the designation was changed to "Article sixteen." and appended to the end of a modified preamble, the comma following the word "incomes" was deleted and the word "States" was changed to a common noun.

Having had the official copy of the Congressional Joint Resolution before them, the Legislature of North Carolina was consistent. In three different versions of their Sixteenth Amendment, they showed that they wished to remove the comma following the word "taxes", and that they wished to append the designation to the preamble and to change that designation. In addition, all three versions of the preamble contain variations from the original preamble. They were not permitted make any of these changes according to the Solicitor of the Department of State, in his memorandum of February 15th, 1913, at 15, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the

bill in **the precise form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)

When the bill has been agreed to in *identical form* by both bodies—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.

The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must concur precisely and exactly with Congress in a proposed Constitutional amendment.

On February 2nd, H. R. 422, S. R. 23, was made a special order for February 7th, Wednesday. (HJ at 237) Though not recorded the special order was delayed until the 8th—

> The hour for the special order having arrived, the Speaker lays before the House H. R. 422, S. R. 23, a joint resolution ratifying the Sixteenth Amendment to the Constitution of the United States. Upon its third reading.
>
> Mr. Ewart calls for the ayes and noes. Call sustained.
>
> The resolution passes its third reading by the following vote, and is ordered enrolled.

A roll call vote was recorded and the tally was 88 in the affirmative, 4 in the negative.

> Mr. Buck gives notice that he will file a protest and ask that it be spread upon the Journal.
>
> Mr. Mooring announces that he is paired with Mr. Carr of Duplin. Were Mr. Carr present he would vote "Aye" and Mr. Mooring would vote "No." (HJ at 301)

Mr. Buck's protest was either not made or not spread upon the journal. On the 11th of February, H. R. 422, S. R. 23 was reported out of the House Committee on Enrolled Bills as properly enrolled, duly ratified and sent to the office of the Secretary of State. (HJ at 337) It was also reported out of the Senate Committee on Enrolled Bills in the same manner. (SJ at 243)

Included in the transmittal to Washington, D. C. was a certificate from the Secretary of State of North Carolina which claimed that the enclosed copy of H. R. 422, S. R. 23 was "a true and correct copy of the original Resolution on file . . ." The following changes were made to the copy sent to Washington from the archival original—

1. the title was changed from "A JOINT RESOLUTION RATIFYING THE SIXTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES." TO "A joint resolution ratifying the sixteenth amendment to the Constitution of the United States."
2. the word "WHEREAS" was changed to "Whereas"
3. the word "the" was inserted after the word "both"
4. the word "Sixty-first" was changed to "sixty-first"
5. the phrase "of America in the following words" was deleted

6. the figure "2/3" was changed to "two-thirds"
7. the second instance of the word "house" was changed to "House"
8. the first instance of the word "states" was changed to "States"
9. the Roman numeral "XVI." was changed to "sixteen."

The certificate of the Secretary of State of North Carolina was, therefore, false on its face.

Finally, H. R. 422, S. R. 23 violated Article V, Section 7 of the North Carolina State Constitution which provided that—

> Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied, and it shall be applied to no other purpose.

Obviously, H. R. 422, S. R. 23 did not state the "special object" of any tax to imposed under that resolution.

The purported ratification of the proposed Sixteenth Amendment by the Legislature of the State of North Carolina was deficient for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in any of the three different resolutions referred to above, specifically in the version transmitted to Washington, H. R. 422, S. R. 23—
   a. the comma following the word "incomes" was deleted
   b. the Roman numeral "XVI" was changed to "sixteen"
   c. the phrase "Article sixteen." was made a part of the preamble
   d. the word "States" was changed to a common noun
   e. the preamble was modified
2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878 in that H. R. 422, S. R. 23 was not signed and the certificate included was false on its face
3. The provisions of Article II, Section 14 of the State Constitution were violated in that the second and third readings of H. R. 422, S. R. 23 were not on different days, nor were the yeas and nays on the third reading recorded in the journal.
4. Violation of Article V, Section 7 in that H. R. 422, S. R. 23 did not state the specific object to which any tax imposed under that resolution would be applied

Nebraska—February 9th, 1911

On January 5th, 1911, retiring Governor of Nebraska, Ashton C. Shallenberger, in delivering his farewell address to the Legislature, included the following remarks about the proposed Sixteenth Amendment—

> INCOME TAX AMENDMENT.
>
> I recommend that a joint resolution in conformance with constitutional requirements be enacted by this legislature authorizing an amendment to the national constitution granting the right to the federal government to levy a tax upon incomes when found necessary by the congress of the United States. By so doing we should not relinquish the right of the states to levy taxes upon incomes but the federal government may need this authority at any time and no tax can be more equitable than one assessed against incomes because only those who can afford to pay the tax will be charged with it and this can be said of no other form of federal or state taxation. Both houses of congress have asked for this authority by large majorities and the president of the United States has also recommended that it be granted to the national government by the states of the Union. (HJ at 33)

The clear inference from this address is that any tax laid upon the people of this country because of the ratification of the proposed Sixteenth Amendment would be laid only "when found necessary by the congress of the United States" and that the "federal government may need this authority."

The address of the newly elected Governor, Chester H. Aldrich, mentioned the amendment only briefly in recommending its ratification. (HJ at 33)

Two ratification resolutions were subsequently introduced in the Nebraska House, the first on January 11th—

> **House Roll No. 22** - Introduced by H. G. Taylor:
>
> A bill for a joint resolution by the legislature of the State of Nebraska ratifying the sixteenth amendment to the Constitution of the United States. (HJ at 62)

The second resolution was introduced on the 12th—

> **House Roll No. 55**—Introduced by Dolezal:
>
> A bill for a joint and concurrent resolution ratifying the proposed amendment to the Constitution of the United States, relating to taxes on incomes, said amendment having passed both houses of the sixty-first congress of the United States of America with the necessary two-thirds majority. (HJ at 70)

That same day, H. R. No. 22 was read the second time, ordered printed and referred to the committee on Constitutional Amendments. (HJ at 71) The next day, H. R. No. 55 was given the same treatment. (HJ at 78)

On January 27th, both H. R. No. 22 and H. R. No. 55 were both reported out of committee with the recommendation that they be placed on general file for consideration by the House. (HJ at 144) The same day, the committee of the whole recommended the following—

> Mr. Speaker: Your committee of the whole have had under consideration House Roll No. 22—and report the same back to the house with the recommendation that it be indefinitely postponed.
>
> Also, House Roll No. 55 for third reading. (HJ at 147)

On the 31st, H. R. No. 55 was found to be correctly engrossed in its final draft. H. R. No. 55 was, at that point, in exactly the form desired by the Nebraska House. (HJ at 159)

On the 1st of February, H. R. No. 55 was taken up for a third reading with the following result—

> **House Roll No. 55**—A bill for a joint and concurrent resolution ratifying the proposed amendment to the Constitution of the United States, relating to taxes on incomes, said amendment having passed both houses of the sixty-first congress of the United States of America with the necessary two-thirds majority—was read the third time and put upon its passage.
>
> Whereupon the Speaker stated: This bill having been read at large on three different days, and the same with all of its amendments having been printed, the question is, shall the bill pass?
>
> The roll was called and those voting in the affirmative were . . .
>
> . . . -(95).
>
> Absent and not voting . . . -(5).
>
> A constitutional majority having voted in the affirmative, the Speaker declared the bill was passed and the title agreed to. (HJ at 170)

A message was then sent to the Senate informing that body of the action of the House on H. R. No. 55. (HJ at 178)

In the Senate, H. R. No. 55 was introduced on the 2nd of February. (SJ at 196) H. R. No. 55 was referred to the Committee on Constitutional Amendments on the 3rd. (SJ at 204) Three days later, H. R. No. 55 was ordered to a third reading. (SJ at 214)

H. R. No. 55 was taken up for the third reading on February 8th with the following results—

> The following bills were read the third time and put upon their final passage:
>
> HOUSE ROLL NO. 55. "A Bill for a Joint and Concurrent Resolution ratifying the proposed amendment to the Constitution of the United States, relating to taxes on incomes, said amendment having passed both houses of the Sixty-first Congress of the United States of America with the necessary two-thirds majority," was read the third time and put upon its final passage.
>
> Whereupon the President stated "This bill having been read at large on three different days, and the same with all of its amendments having been printed the question is, shall the bill pass?"
>
> The roll was called and those voting in the affirmative were . . . Total, 32.
>
> Those voting in the negative were: None.
>
> Excused: Mr. Tanner.
>
> A constitutional majority (32) having voted in the affirmative, the President declared the bill was passed and the title agreed to. (SJ at 226)

Shortly after that vote, the Senate returned H. R. No. 55 to the House with a message

of concurrence. (HJ at 228) (SJ at 233)

The next day, H. R. No. 55 was signed in the House—

> The Speaker, in the presence of the House, while it was in session and capable of transacting business, gave notice that he was about to sign and did sign House Roll No. 55 - A bill for a joint and concurrent resolution ratifying the proposed amendment to the Constitution of the United States, relating to taxes on incomes, said amendment having passed both houses of the sixty-first congress of the United States of America with the **necessary two-thirds majority.** (HJ at 235) (emphasis added)

There is no journal record of the signing of H. R. No. 55 in the Senate. There is, thus, no proof in the journal that Article III, Section 11 of the Nebraska State Constitution was properly followed by the President of the Senate—

> . . . The presiding officer of each House shall sign in the presence of the House over which he presides, **while the same is in session and capable of transacting business**, all bills and concurrent resolutions passed by the legislature. (emphasis added)

On the 13th of February, the Governor sent the following message to the House—

> TO THE HON. JOHN KUHL,
> Speaker of the House of Representatives.
> I am directed by his excellency, the governor, to inform your honorable body that he has this day approved the following act: House Roll No. 55.
> L. B. FULLER,
> Private, Secretary to the Governor.
> State of Nebraska, Executive Office,
> February 13th, 1911. (HJ at 256)

On February 13th, a certificate from the Secretary of State of Nebraska and an unsigned copy of H. R. No. 55 was received in Washington, D. C. which stated the following—

> I, ADDISON WAIT, Secretary of State of Nebraska, do hereby certify that I have carefully compared the annexed copy of "House Roll No. 55" enacted and passed by the thirty-second session of the Legislature of the State of Nebraska, with the enrolled bill on file in this office, and that the same is a true and correct copy of said "House Roll No. 55"

The certificate was signed by Wait, and dated February 11th, 1911. The accompanying unsigned copy of H. R. No. 55 read as follows—

> HOUSE ROLL NO. 55.
> A BILL
>
> For a Joint and Concurrent Resolution ratifying the proposed amendment to the Constitution of the United States, relating to taxes on incomes, said amendment having passed both houses of the Sixty-first Congress of the United States of America with the necessary two-thirds majority.
>
> Whereas, both houses of the Sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to-wit:
>
> "A joint resolution proposing an amendment to the Constitution of the United States.

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution, namely, Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." therefore

Be it Enacted and Resolved by the Legislature of the State of Nebraska:

Section 1. That the said proposed amendment to the Constitution of the United States of America be, and the same is hereby ratified by the Legislature of the State of Nebraska.

Section 2. Be it further resolved, That certified copies of this joint resolution be forwarded by the Governor of this State to the Secretary of State at Washington and to the presiding officers of each house of the national Congress.

John Kuhl
Speaker of the House of Representatives.
Attest:
Henry C. Richmond
Chief Clerk of House of Representatives.
M. R. Hopewell
President of the Senate.
Attest:
Wm. H. Smith
Secretary of the Senate.
Approved February 11th 1911.
Chester H. Aldrich
Governor.

The date on this copy of H. R. No. 55 is reasonable when compared with the date of signing of Wait's certificate. It is, however, impossible when compared with the official record in the House journal of the date of the Governor's signing of H. R. No. 55. The Governor signed H. R. No. 55 on the 13th, according to the House journal. Thus, either the assertion in the journals that the Governor signed H. R. No. 55 on the 13th is false, or the assertion by the documents sent to Washington that the Governor signed H. R. No. 55 on the 11th was false.

The text of the resolution itself, as transmitted to Washington, D. C., contained the following changes to the original Congressional Joint Resolution—

1. the preamble was incorporated into the proposed amendment by virtue of the placement of the quotation marks and of the change of the colon at the end of the preamble to a comma

2. the preamble was modified—

a. the third instance of the word "States" was changed to a common noun

b. the colon at the end of the preamble was changed to a comma

c. the word "namely" and a following comma were added following the second instance of the word "Constitution"

3. the word "States" was changed to a common noun

4. the ending period was placed outside of the proposed amendment

Each of these changes constituted a violation of the duty which the Nebraska Legislature had to concur only in the exact wording as proposed in United States Senate Joint

Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

In addition, H. R. No. 55 conferred taxing powers which the Nebraska Legislature had not the authority to confer. Article IX, Section 1 of the Nebraska State Constitution stated that—

> The Legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property and franchises the value to be ascertained in such manner as the Legislature shall direct, and it shall have power to tax peddlers, auctioneers, brokers, hawkers, commission merchants, showmen, jugglers, inn-keepers, liquor dealers, toll-bridges, ferries, insurance, telegraph and express interests or business, venders of patents, in such manner as it shall direct by general law, uniform as to the class upon which it operates.

In other words, the Nebraska Legislature had the authority to confer State taxing power which the Legislature would subsequently direct and it could also tax the named entities under subsequently passed general laws of the State. No other authority to confer any power to tax existed.

In Article IX, Section 6, the Nebraska State Constitution provided that—

> The Legislature may vest the corporate authorities of cities, towns and villages, with power to make local improvements by special assessments, or by special taxation of property benefited. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes, but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

This section, similar to Section 1, allowed the Legislature to confer taxing power only upon municipal corporations of the State.

In neither Section 1, nor in Section 6, of Article IX is there any authority given to the Legislature to confer the kind of taxing power comprehended by H. R. No. 55.

The purported ratification of the proposed Sixteenth Amendment by the Nebraska Legislature was, thus, defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that H. R. No. 55 contained the following changes from the official Congressional Joint Resolution—

a. the preamble was incorporated into the proposed amendment by virtue of the placement of the quotation marks and of the change of the colon at the end of the preamble to a comma

b. the preamble was modified—

i. the third instance of the word "States" was changed to a common noun

ii. the colon at the end of the preamble was changed to a comma

iii. the word "namely" and a following comma were added following the second instance of the word "Constitution"

c. the word "States" was changed to a common noun

d. the ending period was placed outside of the proposed amendment

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

3. A possibly fraudulent set of documents of ratification transmitted to Washington, D. C.

4. Failure of the President of the Senate to sign H. R. No. 55 in the presence of the Senate in violation of Article III, Section 11 of the Nebraska State Constitution

5. Violation of the Nebraska State Constitution in that H. R. No. 55 conferred taxing power beyond what the Legislature had authority to confer under Article IX

Kansas—February 18th, 1911

On January 10th, 1911, the Governor of the State of Kansas, W. R. Stubbs, delivered his address to the Legislature by his private secretary. Included in that address was a short comment on the proposed Sixteenth Amendment—

> FEDERAL INCOME TAX.
>
> 1. The sixty-first Congress of the United States submitted the following joint resolution, proposing an amendment to the constitution of the United States: "**Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of each House concurring therein,** That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution: Article 16. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states and without regard to any census enumeration."
>
> 2. I recommend that your honorable body ratify this proposed amendment to the constitution of the United States at as early a date as possible. (HJ at 19)

The record shows no further indication that the actual certified copy of Congressional Joint Resolution No. 40 was transmitted to the Kansas legislators. Later, on the day of the Governor's address, Senate concurrent resolution No. 2, entitled "Relating to the adoption of the sixteenth amendment to the constitution of the United States," was introduced in the Senate and was read the first time. (SJ at 14)

On the 12th, the following resolution was considered—

> By Senator Glenn: Senate resolution No. 2, Approving the sixteenth amendment to the constitution of the United States. Referred to the Judiciary Committee. (SJ at 25)

This resolution, referred to the Judiciary Committee, did not have the same title as that concurrent resolution which was introduced by Senator Glenn, two days previous. On the 17th of January, S. C. R. No.2 was reported out of the Judiciary Committee favorably. (SJ at 52) Two days later, a S. C. R. No. 2 with yet another title was brought up for consideration as a special order, even though no special order made on S. C. R. No. 2 had ever been recorded in the journal.

> The president announced that the hour, 10:30 A. M., having arrived for the consideration of the special order, Senate concurrent resolution No. 2, Relating to the sixteenth amendment to the constitution of the United States, the same would now be considered. The resolution was read section by section. A roll call upon the resolution was demanded and had, with the following result:

Yeas: . . . 25.
Nays: . . . 14.
Absent (by leave), Chapman.
A majority having voted in favor of the adoption of the concurrent resolution, the same was adopted. (SJ at 68)

The number of Yeas recorded was insufficient to pass a resolution proposing the ratification of an amendment to the federal Constitution. A two-thirds majority would have required two-thirds of all the members elected to the Senate (that total of the members being 40), or 27 voting in favor. (reference Art. 2, Sec. 131, Kansas State Constitution) By contrast, the House in voting for their own substitute S. C. R. No. 2 stated the following on the record—

> A **constitutional two-thirds majority** having voted in the affirmative, the resolution was adopted. (HJ at 493) (emphasis added)

The deficiency in the vote in the Kansas Senate is documented in Senate Document No. 240, 71st Congress. (See Appendix)

The Senate then transmitted S. C. R. No. 2 to the House, although it is not known which of the several different titles was transmitted. (HJ at 100) On the 20th, without S. C. R. No. 2 having been recorded as read the first time, the following took place—

> The following Senate bills were read the second time and referred to committees as follows:
>
> * * *
>
> Judiciary.
> Senate concurrent resolution No. 2. (HJ at 113)

On the 24th of January, the following report of the Committee on Judiciary was made, recommending—

> . . . that the following be substituted for . . . Senate concurrent resolution No. 2:
> "Relating to a certain proposed amendment to the constitution of the United States:
> "**Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein:**
> "WHEREAS, The Congress of the United States has submitted the following proposed amendment to the constitution of the United States, to the legislatures of the several states of the Union for their ratification, viz.:
> " 'ARTICLE XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.'
> **Therefore be it resolved by the Senate of the State of Kansas, the House of Representatives concurring**, That the foregoing proposed amendment to the constitution of the United States be and the same is hereby ratified.
> **Be it further resolved**, That a copy of this resolution, duly certified by the presiding officers of the two Houses of the Legislature, the chief clerk of the House and secretary of the Senate, by the governor of the state of Kansas, certified under the great seal of the state of Kansas, to the President of the United States, and to the president of the Senate and speaker of the House of Representatives of the Congress of the United States."
> And that the same be adopted as substituted, as Senate concurrent resolution

No. 2.
CLIFF MATSON, **Chairman.**
(HJ at 150)

It is not certain what changes were made between whatever Senate version of S. C. R. No. 2 was sent to the House and the foregoing House version, since the Senate version of S. C. R. No. 2 is apparently not in the archives and was never printed in full in the journal. The House version, however, is not identical to that version which was sent to Washington, D. C. nor is it identical to that version which originally came from Washington in the certified copy of the Congressional Joint Resolution.

On February 10th, the House substitute for Senate concurrent resolution No. 2 was made a special order for February 15th, in the committee of the whole. (HJ at 381) There is no indication that any action occurred on the substitute for S. C. R. No. 2 in the House on the 15th. On the 18th, the substitute came up for consideration—

> Substitute for Senate concurrent resolution No. 2 was read the third time. The question being, Shall the substitute for Senate concurrent resolution No. 2 be adopted? the roll was called, with the following result: Yeas 81, nays 0; absent or not voting, 44.
>
> Members voting in the affirmative were: . . .
>
> Members absent or not voting were: . . .
>
> A constitutional two-thirds majority having voted in the affirmative, the resolution was adopted. (HJ at 493)

The true constitutional majority would have been 84, two-thirds of 125, the latter figure representing the total of all members elected to the House. (see above reference in Senate)

In addition, in contrast to the Senate record, this House substitute was not read section by section as required by Article 2, Section 133 of the Kansas State Constitution which provided that—

> Every bill shall be read on three separate days in each house, unless in case of emergency. Two-thirds of the house where such bill is pending may, if deemed expedient, suspend the rules; but the reading of the bill by sections on its final passage shall in no case be dispensed with.

The House then sent a message to the Senate informing them of the House action on substitute S. C. R. No. 2, along with the resolution. (SJ at 477)

On March 2nd, without any record of Senate consideration of the House substitute for S. C. R. No. 2, or of a vote, the following message was sent to the House from the Senate—

> MR. SPEAKER: I am directed by the Senate to inform the House that . . .
>
> * * *
>
> . . . the Senate has concurred in the House amendment to Senate concurrent resolution No. 2. (HJ at 666)

The failure of the Senate to record a vote on the amended version of their S. C. R. No. 2 was in violation of Article 2, Section 128 of the Kansas State Constitution which provided that—

> Each house shall keep and publish a journal of its proceedings. The yeas and

nays shall be taken and entered immediately on the journal, upon the final passage of every bill or joint resolution. . . .

Furthermore, any of the versions of S. C. R. No. 2 were in violation of Article 11, Section 205 of the Kansas State Constitution which provided that—

> No tax shall be levied except in pursuance of a law, which shall state distinctly the object of the same; to which object only such tax shall be applied.

In other words, no authorization could be given to access the public's money in Kansas unless the object of the funds to be raised by any such authorization were specifically stated. The proposed amendment, of course, stated no such specific object.

On the 7th of March, the Governor, again through his private secretary, notified the Senate that he had approved S. C. R. No. 2. (SJ at 777)

The following April 4th, an unsigned copy of S. C. R. No. 2 was sent to Washington, D. C.—

SENATE CONCURRENT RESOLUTION NO. 2.

Relating to a certain proposed amendment to the constitution of the United States.

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein:

WHEREAS, The Congress of the United States has submitted the following proposed amendment to the constitution of the United States, to the Legislatures of the several states of the Union, for their ratification, viz: "ARTICLE XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." Therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring, That the foregoing proposed amendment to the constitution of the United States be and the same is hereby ratified.

Be it further resolved, That a copy of this resolution, duly certified by the presiding officers of the two Houses of the Legislature, the chief clerk of the House and secretary of the Senate, by the governor of the state of Kansas, certified under the great seal of the state of Kansas, to the President of the United States, and to the President of the Senate and Speaker of the House of Representatives of the Congress of the United States.

I hereby certify that the above concurrent resolution originated in the Senate, and passed that body

January 19th, 1911.

House Amendment concurred in 3/2/1911.

Richard J. Hopkins,
President of the Senate.

Walter A. Johnson,
Secretary of the Senate.

Passed the House February 18, 1911.

G. H. Buckman,
Speaker of the House.

Earl Akers,
Chief Clerk of the House.

Approved March 6, 1911.

W. R. Stubbs,
Governor.

Accompanying the unsigned copy of S. C. R. No. 2 was a certificate from Charles H. Sessions, the Secretary of State, which stated—

> I, CHAS.H.SESSIONS, Secretary of State of the State of Kansas do hereby certify that the following and hereto attached is a true copy of Senate Concurrent Resolution No. 2, relating to a certain proposed amendment to the constitution of the United States, passed by the Legislature of the State of Kansas and approved by the Governor March 6, 1911.

The title of S. C. R. No. 2, in this certificate, is the same as that which substituted for the original S. C. R. No. 2. Additionally, the following changes are evident in S. C. R. No. 2 from the official Congressional Joint Resolution—

1. the official preamble was discarded
2. word "States" was changed to a common noun

Each such change constitutes a violation of the duty which the Kansas Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed amendment to the Supreme Law of the land.

The purported ratification of the Legislature of the State of Kansas is, therefore, void because of the following deficiencies in the process—

1. Failure to concur in Congressional Joint Resolution No. 40 as passed by Congress in that S. C. R. No. 2 contains the following changes—

a. the official preamble was discarded

b. word "States" was changed to a common noun

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

3. Failure to pass S. C. R. No. 2 by a Constitutional majority in either house

4. Failure to record a vote on substitute S. C. R. No. 2 in the Senate in violation of Article 2, Section 128 of the Constitution of the State of Kansas

5. Failure to specify the object of the tax distinctly, in violation of Article 11, Section 205 of the Kansas State Constitution

Colorado—February 20th, 1911

In the official publication *LAWS PASSED AT THE Eighteenth Session of the General Assembly of the State of Colorado,* 1911, the following concurrent resolution is recorded —

SENATE CONCURRENT RESOLUTION NO.3.

INCOME TAX.

(By Senator Garman.)

Concurrent Resolution Ratifying the Sixteenth Amendment to the Constitution of the United States of America.

WHEREAS, both Houses of the Sixty-first Congress of the United States of America at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to-wit:

A Joint Resolution Proposing an Amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution, namely:

"ARTICLE XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration."

Therefore, be it

Resolved by the General Assembly of the State of Colorado, That the said proposed amendment to the Constitution of the United States be, and the same is hereby ratified by the General Assembly of the State of Colorado.

That certified copies of this preamble and joint resolution be forwarded by the Governor of this State to the President of the United States, Secretary of State of the United States, to the Presiding Officer of the United States Senate, and to the Speaker of the United States House of Representatives.

Approved February 20, 1911.

This version of S. C. R. No. 3 is not the same as that introduced on the 16th of January, 1911, in the Senate of the State of Colorado as follows—

The following Senate concurrent resolutions were introduced and read, and

referred to committees as indicated:

S. C. R. NO. 3, by Senator Garman.

Concurrent resolution ratifying the Sixteenth Amendment to the Constitution of the United States of America.

Whereas, Both Houses of the Sixty-first Congress of the United States of America at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to wit:

A joint resolution proposing an amendment to the Constitution of the United States.

Resolved, By the Senate and House of Representatives of the United States of America, in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution, namely:

"Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration"; therefore, be it,

Resolved, By the General Assembly of the State of Colorado, That the said proposed amendment to the Constitution of the United States be, and the same is hereby, ratified by the General Assembly of the State of Colorado.

That certified copies of this preamble and joint resolution be forwarded by the Governor of this State to the President of the United States, Secretary of State of the United States, to the presiding officer of the United States Senate, and to the Speaker of the United States House of Representatives.

Referred to Committee on Constitutional Amendments. (SJ at 79)

This version in the journal contains the following changes to the official Congressional Joint Resolution—

1. the preamble was modified

a. a comma was inserted after the word "Resolved"

b. the word "by" was changed to "By"

c. the word "legislatures" was changed to "Legislatures"

d. a comma was added after the second instance of the word "Constitution"

e. the word "namely" was added following the second instance of the word "Constitution"

2. the ending period was deleted.

The version of this resolution in the published session laws contains the last two changes mentioned in the journal version of the preamble, however, the version of the proposed amendment in the published session laws has the period in the correct place, but is missing the comma after the word "States." The Legislature of the State of Colorado was, thus, in violation of their duty to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter in any way the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed

amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

The reading of S. C. R. No. 3 on the 16th of January was at length. S. C. R. No. 3 was recommended for printing on January 19th, and that report was adopted. (SJ at 100) Four days later, S. C. R. No. 3 was reported as having been printed. (SJ at 121) On the 1st of February, S. C. R. No. 3 was referred to the Committee of the Whole. (SJ at 218)

One week later, without having been read at length a second time, S. C. R. No. 3 was reported favorably by the Committee of the Whole for referral to the Committee on Revision and Engrossment, for a third reading and for final passage. That report was then taken up for a vote on roll call and was passed. (SJ at 320)

On February 9th, the following report was made—

> Mr. President-Your Committee on Revision and Engrossment, to which was referred S. C. R. No. 3, concurrent resolution ratifying the sixteenth amendment to the Constitution of the United States of America, has had the same under consideration, and begs leave to report the same as properly revised and engrossed.
>
> HARVEY E. GARMAN,
> Chairman. (SJ at 327)

On the same day, without having been read the third time at length, S. C. R. No. 3 was taken up for a vote—

> S. C. R. No. 3, by Senator Garman-Concurrent resolution ratifying the sixteenth amendment to the Constitution of the United States of America.
>
> The question being, "Shall the Resolution Pass?" the roll was called, with the following result:

Yeas- . . . -Total, 30.
Nays- . . . -Total, 3.
Absent, Excused and Not Voting- . . . -Total, 2.
A majority having voted in the affirmative, the resolution was declared passed.
(SJ at 331)

If S. C. R. No. 3 had been a bill or joint resolution, the failure to read S. C. R. No. 3 the second and third times would have been a violation of Article V, Section 22 of the Colorado State Constitution—

> Every bill shall be read at length, on three different days, in each House; all substantial amendments made thereto shall be printed for the use of the members, before the final vote is taken on the bill; and no bill shall become a law except by vote of a majority of all the members elected to each House, nor unless on its final passage the vote be taken by ayes and noes, and the names of those voting be entered on the journal.

Under ordinary circumstances, a concurrent resolution would not be held to the same standards as a bill or joint resolution and, in fact, would normally be held to a lower procedural standard. However, S. C. R. No. 3 was considered as having the force of law, having been printed in the session laws. It also involved a highly significant question of the modification of the Supreme Law of the land. The higher standards should have applied. The inclusion of S. C. R. No. 3 in the session laws conforms to the provisions of Article X, Section 3 of the Colorado State Constitution which requires that—

> All taxes . . . shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal;

There can be no question that the legislators of the State of Colorado understood perfectly that S. C. R. No. 3 was in the nature of general law for taxation upon the citizens of that state. The inclusion of S. C. R. No. 3 in the session laws confirms that intent and understanding. The legislators were, thus, obligated by their recorded intent to accord S. C. R. No. 3 the same treatment as any other tax law passed by bill or joint resolution. In fact, the House referred to S. C. R. No. 3 as "a bill for an act." (see below)

After the vote in the Senate, the following message was transmitted to the House—

> To the Honorable the Speaker of the House of Representatives.
> Sir-I am instructed to inform your honorable body that the Senate has passed . . .
>
> * * *
>
> S. C. R. No. 3, by Senator Garman-Concurrent resolution ratifying the sixteenth amendment to the Constitution of the United States of America.
> The same are herewith transmitted.
> Respectfully submitted,
> CHAS. H. LECKENBY,
> Secretary of the Senate. (HJ at 392)

S. C. R. No. 3 was then read by title only and referred to the House Committee on Federal Relations. (HJ at 393) On February the 10th, S. C. R. No. 3 was reported out of committee, but not out of the Committee on Federal Relations—

> Mr. Speaker—Your **Committee on Constitutional Amendments,** to which was

referred S. C. R. No. 3, by Mr. Garman, a bill for an act ratifying the Sixteenth Amendment to the Constitution of the United States of America, has had the same under consideration and begs leave to recommend that same be referred to the Committee of the Whole and do pass. (HJ at 421) (emphasis added)

On the 13th, the Committee of the Whole made the following report—

Mr. Speaker—Your Committee of the Whole begs leave to report it has had under consideration the following resolution, in the course of which it was read at length, being the second reading thereof, and makes the following recommendations thereon:

S. C. R. No. 3, by Senator Garman—A concurrent resolution, ratifying the sixteenth amendment to the Constitution of the United States of America.

The Committee of the Whole recommends that this resolution be referred to the Committee on Revision and Constitution, be engrossed, and placed upon the Calendar for third reading and final passage.

The Committee of the Whole desires to arise and report.

Mr. Proske moved the adoption of the report of The Committee of the Whole.

Motion carried. (HJ at 435)

On the 15th of February, S. C. R. No. 3 was taken up for a final vote—

S. C. R. No. 3, by Senator Garman-Ratifying the Sixteenth Amendment to the Constitution of the United States of America, was placed on third reading and final passage.

The question being, "Shall S. C. R. No. 3 Pass?" the roll was called, with the following result:

Yeas- . . . -Total, 63.

Nays-None.

Absent, Excused and Not Voting- . . . -Total, 2.

A majority of all members elected to the House having voted in the affirmative, S. C. R. No. 3 was duly passed.

Title read and agreed to. (HJ at 483)

On the following day, the Senate sent the following communication to the House—

To the Honorable the President of the Senate.

Sir—I am instructed to inform your honorable body that the House of Representatives has passed the following bills:

S. C. R. No. 3, by Senator Garman-Concurrent resolution ratifying the Sixteenth Amendment to the Constitution of the United States of America. (SJ at 408)

On the 17th, S. C. R. No. 3 was reported as having been correctly enrolled. (SJ at 429) Later that day, the following took place—

The President announced that he was about to sign, would sign, and thereupon did sign, S. C. R. No. 3, by Senator Garman. (SJ at 432)

On the 18th, the signing in the House took place—

The Speaker announced that he was about to sign, would sign, and thereupon did sign, . . . S. C. R. No. 3. (HJ at 531)

In neither the House nor the Senate was the title of the resolution read publicly immediately prior to its signing, a violation of Article V, Section 26 of the Colorado State Constitution which provided that—

> The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the General Assembly, after their titles shall have been publicly read, immediately before signing; and the fact of signing shall be entered on the journal.

On February 24th, the Governor sent a message of confirmation to the Senate—

> S. C. R. No. 3-Ratifying the Sixteenth Amendment to the United States Constitution, in re income tax.
> Date of approval, February 20, 1911.
> Yours truly,
> JOHN F. SHAFROTH,
> Governor. (SJ at 523)

An unsigned copy of S. C. R. No. 3 was transmitted to Washington, D. C. along with a certificate from the Secretary of State of Colorado on February 23rd, but, subsequently, a signed copy of S. C. R. No. 3 was transmitted along with another certificate on May 20th. The version of S. C. R. No. 3 transmitted in both cases, to Washington contains the same changes to the official Congressional Joint Resolution as the version published in the session laws.

The purported ratification of the proposed Sixteenth Amendment by the Legislature of the State of Colorado was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. C. R. No. 3 contains the following changes to the official Congressional Joint Resolution—

a. the preamble was changed

b. the comma after the word "States" is missing.

2. Violation of Article V, Section 22 of the Colorado State Constitution in the failure of the Senate to read S. C. R. No. 3 the second and third times at length and by the failure of the House to read S. C. R. No. 3 the first and third times at length

3. Violation of Article V, Section 26 of the Colorado State Constitution in the failure of the Senate and of the House to read S. C. R. No. 3 publicly by title immediately before its signing, by the President and Speaker, respectively.

North Dakota—February 21st, 1911

The Governor of North Dakota, John Burke, delivered his address to the Twelfth Session of the Legislative Assembly on January 4th, 1911. Included was the transmittal of the Congressional Joint Resolution to the Legislature and the Governor's considered opinion on the proposed amendment—

> It is **my duty to submit this resolution to you for ratification or rejection.** The purpose of this amendment is to enable Congress to pass a constitutional law taxing incomes . . . unless there is something objectionable in the language of the amendment itself, you ought in justice to the demands of the people of this state ratify this amendment. Some of the ablest lawyers in the land object to the broad terms in which the language giving the power to tax is couched. It is claimed that the power to levy and collect taxes on incomes from whatever source derived is too broad and that under it Congress would have the power to impair the obligations and destroy the credit of the state. While upon the other hand just as able lawyers insist that the constitution contemplates the independent exercise by the nation and the state of their constitutional powers and the obligations of the state cannot be impaired by this grant of power.
>
> * * *
>
> This amendment . . . is intended to raise revenue by taxing the incomes of those who are most able to pay. This is right because **those who have the most property** have the most protection of the law. **Next to life property is our most sacred asset.** Next to life it has and should have the fullest protection of the law. It is property that gives us stable government and the taxes paid and invested for the protection of property under laws that make property safe, are good investments . . . . **The ratification may be by joint resolution signed by the governor and certified to the secretary of state at Washington and to the presiding officer of each house.** (emphasis added)

On the 12th of January, 1911, Representative Doyle introduced House Bill No. 1, entitled—

> A joint resolution ratifying the sixteenth amendment to the constitution of the United States.
> Which was read the first and second time and
> Referred to the committee on judiciary. (HJ at 67)

According to Article II, Section 63, of the Constitution of the State of North Dakota of 1889, the first and third readings of a bill must be readings at length—

> Every bill shall be read through three times, but the first and second readings, and those only, may be upon the same day; and the second reading may be by title of the bill only, unless a reading at length be demanded. The first and third

readings shall be at length . . .

On the 21st of January, the committee on judiciary reported H. B. No. 1 with recommendations for amendments to be made to the bill.

> Have had the same under consideration and recommend that the same be amended as follows:
> In line 24 of the original bill strike out the word "general" and substitute the word "legislative," and also in the last paragraph of the original bill strike out all after the word "Washington" and insert the following words: "and to the President of the Senate and the Speaker of the House of Representatives of the National Congress."
> And when so amended recommend the same do pass. (HJ at 150)

Two days later, the committee of the whole recommended the same amendments. Rep. Homnes made a motion that the report of the committee of the whole be adopted.

> Which motion prevailed, and
> The report of the committee was adopted. (HJ at 161)

The day following the amendment of H. B. No. 1, the 24th, the bill was found correctly engrossed. (HJ at 164) Later that same day, H. B. No. 1—

> Was read the third time. (HJ at 173)

If this reading had properly been the third reading, it should have been at length by Article II, Section 63 of the North Dakota State Constitution. However, this particular reading should have been a first reading, because Article II, Section 64 reads—

> No bill shall be revised or amended, nor the provisions thereof extended or incorporated in any other bill by reference to its title only, but so much thereof as is revised, amended or extended or so incorporated shall be re-enacted and published at length.

Having been amended, those amendments to H. B. No. 1 should have gone back to the start of the enactment, or legislative, process and should have been published at length, according to this provision of the North Dakota State Constitution. Neither was ever done. (HJ at 173) H. B. No. 1 was set for consideration for 3 o'clock Monday, January 30th. (HJ at 173)

Later that day, Rep. Price made a motion that the vote setting H. B. No. 1 for consideration for Monday at 3 o'clock, be reconsidered. That motion was adopted and, then, Mr. Price made another motion that the rules be suspended and House Bill No. 1 be placed upon its third reading and final passage, which also passed, however, that roll call was not recorded in the journal. (HJ at 176)

> House Bill No. 1.
> A joint resolution ratifying the sixteenth amendment to the constitution of the United States.
> Was read the third time.
> The question being on the final passage of the bill.
> The roll was called and there were 98 ayes, 1 nay, 4 absent and not voting.

The roll call vote was then recorded.

> So the bill passed and the title was agreed to. (HJ at 176)

This third reading should have been at length according to the Constitution of North Dakota. The rules may have been suspended, however, the Constitution of North Dakota contained no provision for the suspension of the Constitutional provisions for the Legislature in a suspension of the rules. Article II, Section 48 only provided that—

> Each house shall have the power to determine the rules of proceeding . . .

This did not include changing the Constitutional constraints.

On the 25th of January, the House transmitted H. B. No. 1 to the Senate. (SJ at 185) Later in the day, H. B. No. 1 was read the first time, but not at length. It was then read the second time and referred to the committee on federal relations. (SJ at 200)

The Senate committee on federal relations reported H. B. No. 1 with another recommendation to amend.

> Have had the same under consideration and recommend that the same be amended as follows:
> In line 1 of the engrossed bill, strike out the words "both houses of."
> In line 19 of the engrossed bill, strike out the words "Senate and House of Representatives," and insert in lieu thereof the words "legislative assembly."
> In line 24 of the engrossed bill, strike out the words "further be it resolved," and insert in lieu thereof the words "be it further resolved."
> And when so amended recommend the same do pass.
> Mr. Gibbens moved
> That the report be adopted.
> Which motion prevailed, and
> The report of the committee was adopted. (SJ at 569)

Having been amended again, the provisions of Article II, Section 64 should have put H. B. No. 1 back at square one in the Senate, relative to the amendments, however, on the 16th—

> Mr. Gibbens moved
> That House Bill No. 1 be now placed on its third reading and final passage.
> Which motion prevailed. (SJ at 681)

Two days later, H. B. No. 1 was read a third time, not at length, and then amended again.

> Mr. Pierce moved that the bill be amended as follows:
> In line 20 of the printed bill, strike out the words "The Senate and the House of Representatives," and in line 21, strike out the words "Senators" and by inserting in lieu thereof the words "Legislative Assembly."
> Which motion prevailed.
> The question being on the final passage of the bill.
> The roll was called and there were 45 ayes, 1 nay, 3 absent and not voting.

The roll call vote was then recorded.

> So the bill passed and the title was agreed to. (SJ at 684)

The foregoing amendment to H. B. No. 1 should have, again, sent H. B. No. 1, relative to its amendments, back to the beginning of the legislative process.

On the 17th of February, H. B. No. 1 was returned to the House with the amendments that the Senate had passed along with the bill. (SJ at 742) Later that day, the following

repetitive Constitutional violations took place in the House—

> Mr. Doyle of Foster moved
> That the House do now concur in the Senate amendments to House Bill No. 1.
> Which motion prevailed.
> House Bill No. 1.
> A joint resolution ratifying the sixteenth amendment to the constitution of the United States.
> Was read the third time.
> The question being on the final passage of the bill as amended by the Senate,
> The roll was called and there were 92 ayes, no nays, 11 absent and not voting . . .

Roll call recorded.

> So the bill passed and the title was agreed to.
> Mr. Doyle of Foster moved
> That the vote by which House Bill No. 1 passed be reconsidered and the motion to reconsider be laid on the table.
> Which motion prevailed. (HJ at 757)

On the 20th, following the vote in the House and the Senate, H. B. No. 1 was examined and found correctly enrolled. (HJ at 856) H. B. No. 1 was then signed by the Speaker of the House, (HJ at 872) and then by the President of the Senate. (SJ at 797) H. B. No. 1 was signed by the Governor on the 21st of February.

The Department of State received a copy of the North Dakota ratification which contained no errors in the wording, punctuation or capitalization of the amendment proper. However, that copy is unsigned. A certificate accompanying H. B. No. 1 states—

> I, P. D. Norton, Secretary of the State of North Dakota, do hereby certify that the foregoing joint resolution is a true and correct copy of the enrolled House Bill No. 1., duly filed in this office on the 21st day of February, A. D. 1911, at 5 o'clock P. M. of said day.
> IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of North Dakota, this 20th day of February, A. D. 1912.

This document, however, is not signed by P. D. Norton, it is signed by his Deputy, John Andrews, nor is the Great Seal of the State of North Dakota affixed to this document. There is no original on file of H. B. No. 1 in the North Dakota archives due to a fire which they had on December 28th, 1930. H. B. No. 1 is also absent from the Session Laws of North Dakota which cannot be attributed to a fire. The State Historical Society has stated that the reason why H. B. No. 1 is missing from the Session Laws is that this bill of the legislature of the State of North Dakota cannot be considered a law of the state and was merely a concurrent resolution. If that statement is true, then the legislators of North Dakota, knowing full well that H. B. No. 1 would result in the levying of a tax, violated Article XI, Section 175 of the State Constitution which provided that—

> No tax shall be levied except in pursuance of law . . .

The contention of the State Historical Society that a bill once passed is not a law because it is in reality a concurrent resolution begs the question, Why did Mr. Doyle, with the approval of the entire Legislature, call that concurrent resolution a bill?

Regardless of the answer, no certified copy of H. B. No. 1 was ever transmitted to Washington, of which, Philander Knox, the Secretary of State of the United States, was well aware.

The completely uncertified and unofficial copy of H. B. No. 1 which was transmitted to Washington read as follows—

HOUSE BILL NO. 1.

TWELFTH LEGISLATIVE ASSEMBLY, STATE OF NORTH DAKOTA, BEGUN AND HELD AT THE CAPITOL IN THE CITY OF BISMARCK ON TUESDAY, THE THIRD DAY OF JANUARY, ONE THOUSAND NINE HUNDRED AND ELEVEN.

A JOINT RESOLUTION.

Ratifying the Sixteenth Amendment to the Constitution of the United States.

WHEREAS, the Sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to-wit:

"A Joint Resolution proposing an amendment to the Constitution of the United States.

"Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each house concurring therein) That the following article is proposed as an amendment to the Constitution of the United States, which when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution, namely,

"Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Therefore, be it resolved by the Legislative Assembly of the State of North Dakota, that the said proposed amendment to the Constitution of the United States of America be, and the same is hereby, ratified by the Legislative Assembly of the State of North Dakota.

And be it further resolved that certified copies of this joint resolution be forwarded by the Governor of this State to the Secretary of State at Washington, and to the President of the Senate and the Speaker of the House of Representatives of the National Congress.

Even were the above an officially certifiable copy of H. B. No. 1, the preamble has been changed from the original as transmitted to the Legislature by the Governor. Having claimed that "the Sixty-first Congress . . . made the following proposition to amend the Constitution of the United States of America in the following words, to-wit": the Legislature of North Dakota held itself to the liability to concur precisely in the Congressional Joint Resolution. To do any less would have been a violation of their duty to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed

amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments,** either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

The ratification of the Legislature of the State of North Dakota was deficient because of the following—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that the preamble was changed

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

3. Violations of the Constitution of North Dakota—

a. failure of the House to re-enact and to publish their amendments in violation of Article II, Section 64 of the Constitution of North Dakota

b. failure of the Senate to re-enact their amendments in violation of Article II, Section 64 of the Constitution of North Dakota

c. failure of both the House and the Senate to read H. B. No. 1 at length on their respective first and third readings in violation of Article II, Section 63 of the Constitution of North Dakota

d. if it is contended that a bill, such as H. B. No. 1, once passed is not law, then H. B. No. 1 was passed in violation of Article XI, Section 175 of the Constitution of North Dakota in that H. B. No. 1 was not a law

Michigan—February 23rd, 1911

On July 30th, 1909, the Governor of the State of Michigan, Fred M. Warner, sent a letter acknowledging receipt of the certified copy of United States Senate Joint Resolution No. 40 to Philander Knox, the Secretary of State of the United States. In that letter, Governor Warner states that the Congressional Joint Resolution would—

> . . . be called to the attention of the Legislature at its next regular session.

On January 5th, 1911, prior to the transmittal of that certified copy of the Congressional Joint Resolution to the legislature of Michigan, the following occurred—

> Mr. Stewart introduced
> House joint resolution No. 1, entitled
> A joint resolution relative to the taxing of incomes and ratifying the proposed amendment to the Constitution of the United States.
> The joint resolution was read a first and second time by its title.
> The Speaker pro tem, announced that the joint resolution would be referred to the Committee on Revision and Amendment of the Constitution when appointed. (HJ at 26)

Later that day, Governor Warner, who was retiring, delivered his address to the Legislature. At the end of his message, the Governor included the following remarks—

> JOINT RESOLUTION PROPOSING AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES PROVIDING FOR A TAX UPON INCOMES.
>
> I have the honor to transmit herewith to the Legislature of the State of Michigan a communication from the Department of State with certified copy of a Resolution of Congress, entitled "Joint Resolution Proposing an Amendment to the Constitution of the United States," in accordance with the request and **the duty devolving upon the Executive**, the proposed amendment is submitted for your consideration. (HJ at 62)

The "duty" to which the Governor referred is that duty to make sure that the Legislature receives the certified copy of the Congressional Joint Resolution in order to guarantee that they have the exact wording of that resolution in which they must concur exactly.

The actual transmission of the Congressional Joint Resolution to the Legislature did not take place until the 9th of January—

> MESSAGES FROM THE GOVERNOR.
>
> The Speaker laid before the House the following communication transmitted by the Retiring Governor, Fred M. Warner, in his exaugural message . . .

Included in this transmission to the House were the letter from Philander Knox, a copy of Section 205 of the Revised Statutes of the United States, a certificate from Knox, and a certified copy of the Congressional Joint Resolution. (HJ at 94)

> The communication and accompanying resolution were referred to the Committee on Federal Relations. (HJ at 96)

Even though, as will be seen, H. J. R. No. 1, as introduced by Mr. Stewart, contained changes to the official text of the certified copy transmitted by Governor Warner, no amendments were recorded on the journal as having been made to H. J. R. No. 1 subsequent to the transmission of the certified copy to the Legislature. H. J. R. No. 1 was, thus, exactly as Mr. Stewart intended it to be.

On the 13th, a written request was made for the printing of H. J. R. No. 1, which was referred to the Committee on Printing. (HJ at 132) The Committee on Printing recommended that the request be granted, which recommendation was concurred in, and the joint resolution was ordered printed. (HJ at 135)

On the 19th, H. J. R. No. 1, having been printed, was placed upon the files of the members. (HJ at 168) Later that day, H. J. R. No. 1 was reported favorably out of the Committee on Revision and Amendment to the Constitution and was referred to the Committee of the Whole and placed on the general orders for consideration. (HJ at 173)

On the 24th, the Committee of the Whole—

> . . . rose, and, through its chairman, made a report, recommending the passage, without amendment, of the following named joint resolution:
>
> House joint resolution No. 1 (file No. 1), entitled A joint resolution relative to the taxing of incomes and ratifying the proposed amendment to the Constitution of the United States.
>
> The joint resolution was placed on the order of Third Reading of Bills for consideration on or after today. (HJ at 204)

Immediately thereafter, H. J. R. No. 1 was taken up for a vote—

> The joint resolution was then read a third time and passed, **two-thirds of all the members-elect voting therefor**, by yeas and nays, as follows:
>
> YEAS.
>
> * * *
>
> 92
>
> NAYS.
>
> * * *
>
> 1
>
> The House agreed to the title of the joint resolution. (HJ at 204) (emphasis added)

The next day, the 25th of January, the House sent a message to inform the Senate that H. J. R. No. 1 had passed. H. J. R. No. 1 was then introduced into the Senate and read the first and second time by title only and referred to the Committee on Federal Relations. (SJ at 110) On February 23rd, H. J. R. No. 1 was favorably reported out of committee, and taken up for consideration on passage—

> Mr. Mapes moved that the rules be suspended and that the joint resolution be placed on its immediate passage.
>
> The motion prevailed, two-thirds of the Senators present voting therefor.
>
> The question being on the passage of the joint resolution,

The joint resolution was then read a third time and passed, a majority of the Senators-elect voting therefor, by yeas and nays as follows:

YEAS.

* * *

23

NAYS.

* * *

1

The title of the joint resolution was agreed to. (SJ at 307)

On the 27th, the Senate sent a message of concurrence to the House returning H. J. R. No. 1. (HJ at 535) On March 17th, it was announced in the House that H. J. R. No. 1 had been engrossed, signed and presented to the Governor on March 15th. (HJ at 772) It appeared that the Legislature of Michigan had correctly followed State Constitutional procedure in all respects, except one. In Article X, which dealt with Finance and Taxation, Section 6 provided that—

> Every law which imposes, continues or revives a tax shall distinctly state the tax, and the objects to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such a tax or object.

On the 17th of March, the Governor sent Knox a copy of H. J. R. No. 1 by registered mail. The document appears to be signed by both the Speaker of the Michigan House and the President of the Senate, however, it is not signed by the Governor, and, more importantly, the origin of this document is not apparent, since there is no indication in the journals of the text of H. J. R. No. 1, nor is there any evidence in the official records of the State of Michigan of any such document of any kind (letter of January 4th, 1985—see below) related to H. J. R. No. 1.

The document received by Washington, D. C. from the State of Michigan purporting to be H. J. R. No. 1 was on parchment paper and hand-written in stylized, intricate lettering, and read as follows—

House Joint Resolution No. 1
Introduced by Mr. Stewart
A JOINT RESOLUTION.

Relative to the taxing of incomes and ratifying the proposed amendment to the *Constitution of the United States.*

Whereas, The *Congress* of the *United States* of America, after solemn and mature deliberation therein, by a vote of two-thirds of both houses, passed a concurrent resolution, submitting to the legislatures of the several states a proposition to amend the *Constitution* of the *United States,* which resolution is in the following words:

Resolved by the *Senate* and *House of Representatives* of the *United States* of *America* in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents, and purposes as a part of the Constitution:

"ARTICLE XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."

Resolved, by the *Senate* and *House of Representatives* of the *State of Michigan,*

That in the name and behalf of the people of this state, we do hereby ratify, approve and assent to the said amendment.

Resolved, That a copy of this assent and ratification, engrossed on parchment, be transmitted by his Excellency, the Governor, to the Senate and House of Representatives of the United States in Congress assembled, and to the Secretary of State of the United States. (See Appendix)

The Michigan legislators having had a certified copy of the Congressional Joint Resolution knew exactly what the wording of that resolution was. Despite that, the following changes were made to the original, official resolution—

1. the preamble was modified—
a. the word "Constitution" was changed to a common noun
b. the second instance of the word "States" was changed to a common noun
c. a comma was added after the word "intents"
2. the word "States" was changed to a common noun

Any change whatsoever by the Legislature of the State of Michigan was a violation of their duty to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President. **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur

with Congress in a proposed amendment to the Supreme Law of the land.

Thus, the Legislature of the State of Michigan failed to ratify the proposed Sixteenth Amendment because the following deficiencies—

1. Lack of jurisdiction of the certified copy of the Congressional Joint Resolution at the time of its introduction in the Michigan House of Representatives

2. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that H. J. R. No. 1 included the following changes to the official resolution—

a. the preamble was modified—

i. the word "Constitution" was changed to a common noun

ii. the second instance of the word "States" was changed to a common noun

iii. a comma was added after the word "intents"

b. the word "States" was changed to a common noun

3. Violation of Article X, Seciton 6 of the Constitution of the State of Michigan forbidding the imposition of a nonspecific tax upon the people of Michigan, or of the passing of any tax legislation which would require the reference to any other law.

Finally, there is a serious question as to the authenticity of the version of H. J. R. No. 1 received by Washington since there are no documents whatsoever to support that version in the records at Michigan. In a letter from Gay Meese, Great Seal & Registration Section, Michigan Department of State, dated January 18th, 1984, she states—

> I have reviewed the Michigan Public Acts books for the years 1909 through 1913 and can find no concurrent resolution adopted by the Legislature ratifying the 16th amendment to the U. S. Constitution.

In another letter from Martin McLaughlin, Local Records Specialist, Michigan Department of State, dated January 4th, 1985, referring to a search performed by Mr. McLaughlin to find documents related to the resolution sent by Michigan officials to Washington, D. C. as official notice of ratification of the proposed Sixteenth Amendment—

> The search uncovered no documents related to House Joint Resolution No. 1, 1911 . . . .

Iowa—February 27th, 1911

On January 11th, 1911, in the Iowa legislature, House Joint Resolution No. 1, was introduced with the following text—

> WHEREAS, Both Houses of the Sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to-wit:
>
> "A joint resolution proposing an amendment to the Constitution of the United States.
>
> "**Resolved**, By the Senate and House of Representatives of the United States of America in Congress assembled (twothirds of each house concurring therein), that the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution, namely, Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." Therefore, be it
>
> **Resolved**, By the Senate and House of Representatives of the State of Iowa, that the said proposed amendment to the Constitution of the United States, be, and the same is hereby, ratified by the General Assembly of the State of Iowa; and further be it
>
> **Resolved**, That certified copies of this Joint Resolution be forwarded by the Governor of this state to the Secretary of State at Washington and to presiding officers of each house of the National Congress. (HJ at 61)

H. J. R. No. 1 was then read the first and second time and referred to the Committee on Judiciary. On the 26th of January, it was recommended by that committee that the Committee on Constitutional Amendments should handle H. J. R. No. 1. That report was adopted. (HJ at 248) On the 31st, the Committee on Constitutional Amendments submitted a report making the following recommendations—

> That the title of said resolution be amended to read as follows: "A Joint Resolution ratifying the Amendment to the Constitution of the United States proposed by Congress as the Sixteenth Amendment thereto, relative to laying and collecting a tax on income." That a semicolon be substituted for the comma following the word "Constitution" in the eight line thereof, and that the word "namely" and comma immediately following be omitted; and when so amended the resolution do pass. (HJ at 308)

The latter two amendments were upon that part of H. J. R. No. 1 which followed the wording of the preamble to United States Senate Joint Resolution No. 40 and that report was adopted. (HJ at 307) These two amendments were apparently made in

recognition of the necessity to have the preamble, as quoted, conform to the official Congressional Joint Resolution. The word "States" in the wording of the proposed amendment, however, was changed to a common noun. On the 1st of February, the amendments to H. J. R. No. 1 were adopted by motion and H. J. R. No. 1 then read as follows—

HOUSE JOINT RESOLUTION NO. 1

A Joint Resolution ratifying the Amendment to the Constitution of the United States proposed by Congress as the Sixteenth Amendment thereto relative to laying and collecting a tax on income.

WHEREAS, Both Houses of the Sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the **following** proposition to amend the Constitution of the United States of America in the **following** words, to-wit:

"A joint resolution proposing an amendment to the Constitution of the United States.

"**Resolved**, By the Senate and House of Representatives of the United States of America in Congress assembled (twothirds of each house concurring therein), that the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution: Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." Therefore, be it

Resolved, By the Senate and House of Representatives of the State of Iowa, that the said proposed amendment to the Constitution of the United States, be, and the same is hereby, ratified by the General Assembly of the State of Iowa; and further be it

Resolved, That certified copies of this Joint Resolution be forwarded by the Governor of this state to the Secretary of State at Washington and to presiding officers of each house of the National Congress. (HJ at 320)

H. J. R. No. 1 was then taken up for a vote—

Mr. Dabney moved that the Rules be suspended, the Joint Resolution be considered engrossed, and read a third time now, which motion prevailed, and the Joint Resolution was read a third time.

On the question, "Shall the Joint Resolution pass?"

The ayes were . . . -98.

The nays were . . . None.

Absent or not voting . . . -10.

So the Joint Resolution passed and the title, as amended, was agreed to. (HJ at 320)

So, the final draft of H. J. R. No. 1 was not completed prior to the vote and it is not evident from the journals that H. J. R. No. 1, as amended, was engrossed before transmission to the Senate. On the following day, the Senate was sent the following message—

MR. PRESIDENT - I am directed to inform your honorable body that the House has passed the following Joint Resolution, in which the concurrence of the Senate is asked:

HOUSE JOINT RESOLUTION NO. 1,

Ratifying the amendment to the Constitution of the United States proposed by Congress as the Sixteenth Amendment thereto, relative to laying and collecting a

tax on income. (SJ at 305)

H. J. R. No. 1 was read a first and a second time, though it is not clear from the Journal whether those readings were at length and the resolution was then referred to the Committee on Constitutional Amendments. (SJ at 307)

On the 15th, the Committee on Constitutional Amendments and Suffrage reported H. J. R. No. 1 favorably. (SJ at 436) H. J. R. No. 1 was then made a special order for the morning of February 22nd. (SJ at 504) On the morning of the 22nd, the following took place—

> THIRD READING OF BILLS.
>
> The hour having arrived for Special Order No. 1, on motion of Senator Parshall Joint Resolution No. 1, ratifying the amendment to the constitution of the United States, proposed by Congress, as the Sixteenth Amendment thereto, relative to laying and collecting a tax on income, was taken up for consideration.
>
> Senator Adams moved that the Joint Resolution be referred to the Committee on Judiciary.
>
> On this motion a roll call was demanded.
>
> The ayes were . . . -20
>
> The nays were . . . -25
>
> Absent or not voting . . . -5
>
> So the Senate refused to refer the Joint Resolution to the Committee on Judiciary.
>
> Senator Clarkson offered the following amendment and moved its adoption:
>
> "I move to amend the Joint Resolution by striking out the words: 'Be it resolved by the Senate and the House of Representatives of the state of Iowa,' found in lines 20 and 21, and insert in lieu therefor the following: 'Be it resolved by the General Assembly of the state of Iowa.' "
>
> Adopted.
>
> Senator Clarkson moved that the rules be suspended, the Joint Resolution be read a third time now, which motion prevailed, and the Joint Resolution was read a third time.
>
> On the question, "Shall the Joint Resolution pass?"
>
> The ayes were . . . -45.
>
> The nays were . . . -3.
>
> Absent or not voting . . . -2.
>
> So the Joint Resolution having received a Constitutional majority, was declared to have passed the Senate and its title agreed to. (SJ at 566)

Two days later, on the 24th of February, the Senate sent the House a message of concurrence—

> MR. SPEAKER—I am directed to inform your honorable body that the Senate has amended and passed House Joint Resolution No. 1, in which the concurrence of the Senate was asked:
>
> A Joint Resolution ratifying the amendment to the Constitution of the United States proposed by Congress as the 16th Amendment thereto relative to laying and collecting a tax on income. (HJ at 687)

Shortly thereafter, the amendments which the Senate had made on H. J. R. No. 1 were taken up and considered—

> Mr. Dabney moved that the House concur in the Senate amendments.
>
> On the question, "Shall the House concur?"

The ayes were . . . -81.
The nays were . . . -None.
Absent or not voting . . . -27
So the House concurred in Senate amendment. (HJ at 689)

The next day, the report from the Committee on Enrolled Bills on H. J. R. No. 1 was submitted and adopted. (HJ at 724) Later that same day, H. J. R. No. 1 is recorded as having been signed by the Speaker—

> The Speaker announced that as Speaker of the House he had signed in the presence of the House, House Joint Resolution No. 1 . . . . (HJ at 729)

H. J. R. No. 1 was again reported out of the House Committee on Enrolled Bills and the report adopted. (HJ at 730)

Although there is no journal record of the President of the Iowa Senate signing H. J. R. No. 1, the Senate Committee on Enrolled Bills submitted a report on H. J. R. No. 1 which was adopted. (SJ at 617)

Accompanying the copy of H. J. R. No. 1 transmitted to Washington, D. C. by B. F. Carroll, the Governor of Iowa, is a certificate signed by both him and the Secretary of State of the State of Iowa, stating that the copy of H. J. R. No. 1 transmitted was a "true and correct copy of the joint resolution, known as House Joint Resolution No. 1 and that the same has passed both houses of the General Assembly of the State of Iowa and has been approved by . . . (the) Governor of the State.

The copy of H. J. R. No. 1 sent to Washington, not signed, read as follows—

A JOINT RESOLUTION

RATIFYING THE AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES PROPOSED BY CONGRESS AS THE SIXTEENTH AMENDMENT THERETO, RELATIVE TO LAYING AND COLLECTING A TAX ON INCOME.

Whereas, both houses of the Sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, towit:

A joint resolution proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled(twothirds of each house concurring therein), that the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution; Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

Therefore, be it resolved by the General Assembly of the State of Iowa, that the proposed amendment to the Constitution of the United States, be, and the same is hereby, ratified by the general assembly of the State of Iowa.

And, further be it resolved, that certified copies of this joint resolution be forwarded by the Governor of this state to the Secretary of State at Washington and to presiding officers of each house of the National Congress.

PAUL E. STILLMAN
Speaker of the House.
GEORGE W. CLARKE

President of the Senate.
I hereby certify that this Joint Resolution originated in the House and is known as House Joint Resolution No. 1.
C. R. BENEDICT
Chief Clerk of the House.
Approved *February 27, 1911.*

If, as the certificate of the Governor attests, the above was a true and correct copy of H. J. R. No. 1 and that it was approved by the Governor, then either the certificate is fraudulent and/or the copy is fraudulent. Article III, Section 16 of the Iowa State Constitution provides that—

> Every bill which shall have passed the general assembly, shall, before it becomes a law, be presented to the governor. If he **approve**, he shall **sign** it . . . (emphasis added)

If the Governor did, indeed, sign H. J. R. No. 1, then the above document was fraudulent since it does not indicate the Governor's signature anywhere. If the Governor did not sign H. J. R. No. 1, then the certificate is fraudulent.

The original H. J. R. No. 1 is apparently missing from the records of the State of Iowa. While the House journal records the signing of H. J. R. No. 1 by the Speaker, no such similar record appears in the Senate journal. Failure of either or both presiding officers of the Legislature to sign a bill is a violation of Article III, Section 15 of the Constitution of the State of Iowa

> . . . every bill having passed both houses, shall be signed by the speaker and the president of their respective houses.

The Iowa ratification was, thus, deficient in the following respects—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that H. J. R. No. 1 contained the following changes to the official Congressional Joint Resolution—
   a. the preamble was modified
   b. the word "States" was changed to a common noun
2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878
3. Failure to have both presiding officers sign H. J. R. No. 1 in violation of Article III, Section 15 of the Iowa State Constitution
4. The submission of a fraudulent certificate and/or copy of H. J. R. No. 1

Missouri—March 16th, 1911

The Governor of Missouri received a certified copy of the Congressional Joint Resolution on September 3rd, 1909. In sending Philander Knox, the Secretary of State of the United States, an acknowledgement, the Governor stated that he would submit that copy to the Missouri Legislature at the 1911 session. There is, however, no apparent record of that certified copy being transmitted as such.

On February 15th, 1911, Senator McAllister introduced Senate Joint and Concurrent Resolution No. 8, entitled—

> A joint and concurrent resolution of the House and Senate ratifying the proposed amendment to the Constitution of the United States submitted by the Sixty-first Congress; Which was read first time and 400 copies ordered printed. (SJ at 262)

That resolution read as follows—

> WHEREAS, the Congress of the United States, at the session thereof begun and holden in the city of Washington on Monday, the fifteenth day of March A.D. nineteen hundred and nine, did propose in the manner and form provided in the Constitution, as an amendment to the Constitution of the United States the following:
>
> ARTICLE XVI. The congress shall have power to levy and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration, and did submit the same to the legislatures of the several states for ratification;
>
> Therefore, be it resolved, by the Senate and the House of Representatives, that the legislature of the state of Missouri does hereby ratify and assent to said amendment to the end that the same may become valid to all intents and purposes as a part of the Constitution of the United States; and be it further,
>
> Resolved, that a duly attested copy of this resolution, together with proper evidence of its adoption be transmitted by the President of the Senate and the Speaker of the house to the Secretary of State at Washington. (archives)

In the last paragraph, the word "given" had been scratched out, and the word "transmitted" substituted. A deliberate change. In the body of Article XVI, the word "lay" was scratched out, and the word "levy" substituted. Also, a deliberate change. This was in addition to the discarding of the preamble, changing the word "Congress" and the word "States" to common nouns and to the appending of the phrase "and did submit the same to the legislatures of the several states for for ratification; Therefore, be it resolved, by the Senate and the House of Representatives, that the legislature of the state of Missouri does hereby ratify and assent to said amendment to the end that the

same may become valid to all intents and purposes as a part of the Constitution of the United States; and be it further, Resolved, that a duly attested copy of this resolution, together with proper evidence of its adoption be transmitted by the President of the Senate and the Speaker of the house to the Secretary of State at Washington" by virtue of the comma inserted after the word "enumeration".

These deliberate changes were a violation of the duty which the Missouri Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken***. (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed amendment to the Supreme Law of the land.

S. J. C. R. No. 8, proposing an amended Sixteenth Amendment, made its way through the Senate in uneventful fashion. On the 21st of February, No. 8 was "taken up, read second time and referred to Committee on Ways and Means." (SJ at 367) On the 22nd, it was reported out of the Committee on Ways and Means, which recommended that the resolution pass. On the 27th, the resolution "was taken up, and on motion of Senator Humphrey, ordered engrossed and printed." (SJ at 443) On March 3rd, it was found to be correctly engrossed. (SJ at 544) And, finally, on March 7th, No. 8 "(w)as taken up, and on motion of Senator McAllister, put upon its third reading, and passed . . ." The vote

in the Senate was 30 in favor and none against. (SJ at 606)

> The President declared the bill passed.
> The title was read and agreed to.
> Senator McAllister moved that the vote by which the bill passed be reconsidered.
> Senator Welch moved that the motion lie on the table.
> The latter motion prevailed.

No. 8 went on to consideration by the House. On March 8th, it was announced as having passed the Senate and recommended to pass the House. (HJ at 857) It was also read for the first time. On the 10th, "Senate joint and concurrent resolution No. 8 was read second time and referred to Committee on Ways and Means." (HJ at 953) On March 14th, the House Committee on Ways and Means recommended that the resolution pass. (HJ at 1029) On the 16th, a motion to substitute House Joint and Concurrent Resolution No. 16 for Senate Joint and Concurrent Resolution No. 8 was passed. The resolution, as amended, was read the third time and was passed by a vote of 113 in favor, 9 against, 26 absent. Then the title to S. J. C. R. No. 8 was read and agreed to. Representative Hull made a motion that the vote by which S. J. C. R. No. 8 had passed be reconsidered, and that that motion lie on the table, which motion carried. (HJ at 1117)

On March 17th, Senate Joint and Concurrent Resolution No. 8 was presented in the Senate with the amendment to title from the House (SJ at 843, 846), however, the amendment was not set forth in full, nor was any vote recorded as having been taken upon the resolution as amended in violation of Article IV, Section 32 of the Missouri State Constitution of 1875 which provides—

> No amendment to bills by one house shall be concurred in by the other, except by a vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting for and against recorded upon the journal thereof; . . .

On the 20th of March, No. 8, along with other bills, was "taken up, and the President announced that the same had passed both branches of the General Assembly; that all other business would be suspended; that the **bills** be read at length, and that unless objection be made he would sign the same, to the end that they become **laws**, and directed the Secretary, and no objection being made, the presiding officer, in the presence of the Senate, in open session, and no business intervening, affixed his signature thereto." (SJ at 1035)

Later that day, the same procedure was followed in the House—

> All other business was suspended, Senate joint and concurrent resolution No. 8 . . . (others) were read at length, and, no objections being made, the Speaker, in open session, in the presence of the House, affixed his signature thereto, as provided by the Constitution. (HJ at 1383)

The title of the certified copy of S. J. C. R. No. 8 received at Washington reads—

> A joint and concurrent resolution of the house and senate ratifying the proposed amendment to the Constitution of the United States, submitted by the sixty-first Congress:

Note that the words "house," "senate" and "sixty-first" are all changed to common

nouns from the original Senate title, confirming that the Senate resolution had been amended in the House.

The copy of S. J. C. R. No. 8 transmitted to Washington, D. C. was in proper order as to the signatures by both presiding officers, however, the Governor's signature is absent as is any record in the journals of presentation to the Governor. This was a violation of Article V, Section 14 of the Missouri State Constitution which required that—

> Every resolution to which the concurrence of the Senate and House of Representatives may be necessary, except on questions of adjournment, of going into joint session, and of amending this Constitution, shall be presented to the Governor, and before the same shall take effect, shall be proceed upon in the same manner as in the case of a bill . . .

Finally, S. J. C. R. No. 8 was passed in violation of Article X, Section 1 of the State Constitution which provided that—

> The taxing power may be exercised by the General Assembly for **State** purposes, and by counties and other municipal corporation, under authority granted to them by the General Assembly, for **county and other corporate** purposes. (emphasis added)

Obviously, S. J. C. R. No. 8 granted a taxing power completely outside of the jurisdiction of the General Assembly of the State of Missouri and of the State itself.

The ratification of the State of Missouri was, thus, defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. C. R. No. 8 contains the following deliberate changes—

a. the official preamble was discarded.

b. the word "lay" was changed to "levy"

c. the word "Congress" was changed to a common noun

d. the word "States" was changed to a common noun

e. the phrase "and did submit the same to the legislatures of the several states for ratification; Therefore, be it resolved, by the Senate and the House of Representatives, that the legislature of the state of Missouri does hereby ratify and assent to said amendment to the end that the same may become valid to all intents and purposes as a part of the Constitution of the United States; and be it further, Resolved, that a duly attested copy of this resolution, together with proper evidence of its adoption be transmitted by the President of the Senate and the Speaker of the house to the Secretary of State at Washington" was appended to S. J. C. R. No. 8 by virtue of the comma inserted after the word "enumeration"

2. S. J. C. R. No. 8 was amended as to title in its final form in violation of Article IV, Section 32 of the Missouri State Constitution

3. Though the certified copy of S. J. C. R. No. 8, as transmitted to Washington, D. C., was proper by appearances, the failure of the Legislature to submit the resolution to the Governor violated Article V, Section 14 of the Missouri State Constitution

4. Violation of Article X, Section 1 of the State Constitution in granting taxing powers which the Legislature had not the authority to grant.

Maine—March 31st, 1911

On January 5th, 1911, the Governor's address before the Legislature of the State of Maine included a short comment on taxation—

> EQUALIZE TAXATION.
>
> Our present system of taxation presents many unnecessary inequalities and works much injustice. To equalize, so far as may be, the tax burden, is a serious work to which you should dedicate your best effort. The work of tax reform should go on in this State until every vestige of special privilege disappears from our tax laws. (HJ at 35)

On the 11th of January, Governor Bert M. Fernald transmitted the certified copy of the Congressional Joint Resolution proposing the Sixteenth Amendment to the President of the Senate in a communication dated January 4th, 1911—

> I have the honor to transmit herewith a communication received at this Department from the Secretary of State of the United States, under date of July 29, 1909, enclosing a certified copy of a Resolution to Congress, entitled "Joint Resolution proposing an amendment to the Constitution of the United States," the text of which Resolution is as follows, to wit:
>
> Resolved by the Senate and House of Representatives of the United States of America in Congress (two-thirds of each House concurring therein), that the following Article is proposed as an amendment to the Constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution;
>
> 'Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.'
>
> (Signed)
>
> BERT M. FERNALD. (LR at 31)

On motion of the Senate, Governor Fernald's communication with the accompanying Congressional resolution was referred to the Committee on Taxation and sent down for concurrence. (LR at 31)

The next day, the Senate transmitted the Governor's communication to the House of Representatives. The Governor's communication, prior to the conversion of the accompanying certified copy Congressional Joint Resolution to a resolution of the Maine Legislature, was printed. (LR at 36) Each Maine legislator thus had a complete and verified copy of the Congressional Joint Resolution for his individual use.

On February 2nd, a ratification resolution was introduced in the House—

> Mr. HERSEY of Houlton—Mr. Speaker, I wish to introduce this resolve,

Resolve ratifying the proposed amendment to the Constitution of the United States giving Congress power to lay and collect taxes on incomes; and I move a suspension of the rules and that this resolve take its two readings at the present time and be passed to be engrossed.

Mr. PATTANGALL of Waterville—Mr. Speaker, the matter that is taken up in the resolve proposed by the gentleman from Houlton is now before the Taxation Committee and a hearing has been ordered by that committee for next week in order that people throughout the State who desire to do so may be heard on that question: and I presume it would be well perhaps to await that hearing before the committee. I therefore move that this resolve lie on the table pending a hearing before the taxation committee and a report by that committee.

Mr. HERSEY—Mr. Speaker, I was not aware that there was any such hearing before the committee; if there is I will withdraw my motion and move a reference of this resolve to the committee on taxation.

The motion was agreed to. (LR at 151)

In the Senate, on the 8th of February, a communication was received from the House which announced, without prior record of such House action, that a resolution had been passed in the House relative to a federal constitutional amendment—

Joint resolution of the 75th Legislature of the State of Maine, making application to the Congress of the United States to call a convention for proposing an amendment to the constitution of the United States, came from the House, by that branch read and passed.

On motion by Mr. Staples of Knox, the resolution was tabled for printing. (LR at 177)

In the House on the 22nd, a communication was received from the Senate which announced, without prior record of such Senate action, that a resolution had been passed in the Senate relative to a federal constitutional amendment.

Resolution of the 75th Legislature of the State of Maine making application to the Congress of the United States to call a convention for proposing an amendment to the constitution of the United States.

This resolution received a passage in the House, and comes from the Senate with Senate Amendment A adopted.

The House receded from its former action in the passage of the resolution. Senate Amendment A was adopted and the resolution received a passage as amended in concurrence. (LR at 320)

On March 14th, the following motion was brought—

On motion of Mr. Davies of Yarmouth,

Ordered, that the committee on taxation is hereby directed to lay before this House on Wednesday, March 15, its report on the resolution proposing an amendment to the Federal Constitution authorizing Congress to impose a tax on incomes.

On motion of Mr. Pattangall of Waterville the order was tabled and assigned for Thursday. (LR at 575)

One week later, on the 21st, the Committee on Taxation had finished their deliberations on all the matters before them and issued this report—

A majority of the committee on taxation on resolution in favor of an amendment to the Constitution of the United States so as to grant to the Federal

government the power to levy a tax on incomes, reported a Bill for the taxation of income by the State and recommended that the Legislature pass such a Bill, but "it is the sense of the committee should the committee's Bill fail of passage the original resolve should pass." Minority report, ought not to pass.

On motion of Mr. Mace of Great Pond the report was tabled and assigned for consideration tomorrow. (LR at 697)

While in the Committee on Taxation, the resolution on the proposed Sixteenth Amendment had become a bill for a State income tax. Later that day—

> On motion of Mr. Pattangall, House Order relating to tax on incomes, was taken from the table, and on further motion by Mr. Pattangall the order was indefinitely postponed. (LR at 701)

In other words, the order to have the Committee on Taxation report upon the resolution in ratification of the proposed Sixteenth Amendment "was indefinitely postponed."

The following day, the reports of the Committee on Taxation were taken from the table and then put back on the table for printing with consideration delayed until the last day of the week. (LR at 746)

Meanwhile, in the Senate, on the 28th of March, a week after the House had the above, an attempt was made to introduce a Sixteenth Amendment resolution. The following took place—

* * *

Mr. Osborn of Somerset asked unanimous consent to present the following resolve: "Resolve ratifying the proposed amendment to the Constitution of the United States giving Congress power to lay and collect taxes on incomes."

Mr. MILLIKEN of Aroostook: Mr. President: If I understand the situation correctly, a resolve embodying the same subject matter has been introduced and heard by a committee, reported from the committee and is now under consideration in the House of Representatives, and will arrive here in due season, if it is not lost or referred to the next Legislature. Under these circumstances it seems to me it would be improper to consider this resolve at this time.

Mr. OSBORN: Mr. President: I would not ask that it be heard today, but lest it should be lost or not heard from, I do not wish to go home without voting upon it, as both political parties pledged themselves in this matter. I am willing to have it lie on the table until tomorrow.

Mr. MILLIKEN: Mr. President: I feel as the senator has said, and ask that it be received and laid on the table.

Mr. KELLOGG of Penobscot: Mr. President: I object to the consideration of this measure today. I may not be right, but I think a measure of that kind either requires unanimous consent or a two-thirds vote of the Senate before it can be received, and I object to its being received by the Senate.

Mr. MILLIKEN: Mr. President: As I said a moment ago, as a precautionary measure, I hope the senator will be allowed to lay this on the table, but it seems to me that if the senator from Penobscot objects he is entirely within his rights, and that only unanimous consent, or two-thirds vote, can it be received, and it could not be laid on the table until it was received.

The PRESIDENT: The Chair rules that only by unanimous consent can this matter be received.

Mr. OSBORN: Mr. President, all right, if they do not wish to receive such a resolution I am satisfied.

Upon putting the motion of Mr. Kellogg of Penobscot, and the Chair ruled that the resolve could not be received. (LR at 910)

In other words, in order to bring any resolution before the Senate which had not been reported out of committee required "unanimous consent," i. e., the entire Senate, to allow consideration of such a resolution.

In the House, on the 28th, the reports of the Committee on Taxation were taken from the table for consideration, and a motion was made to accept the majority report, the recommendation for a State income tax bill. (LR at 931) An inquiry was made to the Speaker about the status of the reports from committee and the Speaker gave his answer—

The SPEAKER: The Chair understands that this committee referred back to this House a substitute bill for the resolve relating to the taxation of incomes. If that should fail of a passage, they still desire action upon the federal bill. Both matters are before the House for consideration. (LR at 932)

At that point, a lengthy debate ensued, a member of the Committee on Taxation speaking first—

Mr. Mace of Great Pond: Mr. Speaker, I wish to offer an amendment to House Bill, No. 755. It appears to me that the people of the State of Maine, **the plain common people,** are clamoring for some peace from the burden of taxation, and the committee on taxation, after considering the matter of a federal income tax and a State income tax for 10 long weeks, beg to submit to the members of this House some of the reasons why they were influenced in recommending for your consideration the substitution of House Bill, No. 755, a State income tax. It is common belief, and as I believe the common wish, of every member of this House, and the unanimous wish, that some form of an income tax should be passed or adopted, that **the plain people** of the State of Maine are looking to us for relief from some of the burdens of taxation which are bearing too heavily upon them; and it is an accepted fact that **the people understand, or believe they understand, that if we pass or adopt this amendment for a federal income tax, it will become the panacea for all the evils of taxation that the burdens of taxation will be lifted from the poor throughout the length and breadth of this State and placed upon the incomes of the rich,** but I believe, Mr. Speaker and gentlemen, that **this is an erroneous belief. If we surrender to the national government our inherent rights and those rights are grated into the Constitution of the United States, we can never hope to recover them again for the benefit of our citizens within the length and breadth of this State of ours.** We shall be represented in the next Congress of the United States by fewer congressmen, or at least by a less percentage. The trend of population has been in the past and is now toward the great central West. And by surrendering the rights to the government of the United States to take from her citizens their hard earnings and place them in the treasury of the United States, what right can we expect that our proportional part shall ever be received into the State of Maine? Congressmen from the middle West through their votes will prevail in our great Congress. For ten weeks we considered a bill, or two bills, that would have an effect upon lessening the burdens of taxation of our own citizens . . . .

Some men claim that it is our party platform, in the platforms of both political parties in this great State of Maine . . . . I believe it is not only our right but is our bounden duty, if we believe that any other bill would be better for those people, **the plain people,** the people who toil upon the farms and who work in the shops, that if any bill that we could substitute to lessen or relieve them from the burdens

of taxation imposed upon them by the federal government, burdens of taxation imposed upon them by an extravagant administration of State affairs, that it is not only our right but it is our duty to do so, and that we must so report according to the dictates of our own consciences . . . I hope that the members of this House will adopt Bill No. 755 for a State income tax. (emphasis added)

The next legislator to speak had undoubtedly kept every single one of his campaign pledges—

Mr. HERSEY: Mr. Speaker, I was elected to the Seventy-Fifth Legislature of Maine on a party platform which had the following plank, "We favor the ratification by the next Legislature of the amendment to the federal constitution as proposed by Congress relative to an income tax," and if I did not favor standing upon that plank . . . I am not dealing in good faith with my political party, and if the gentlemen from Great Pond or those of his political faith in this Legislature can come to this Legislature at this hour and repudiate this plank- . . . then they . . . are unfaithful and have repudiated their campaign promises. Not only that but should such a measure go through this Legislature it should meet with the veto of your Governor, for in his message he said, "The people have been promised that we will approve the proposed amendment to the national constitution authorizing the levying of an income tax. That promise should be kept." And I say, if the Governor should not veto the action of this House in repudiating the campaign promises, then he repudiates his message which he says comes from the people of Maine.

Now, Mr. Speaker, I waited in this House some time that there might be such a resolution put before this Legislature, because I understood at that time that it was the policy of certain politicians in this Legislature not to endorse the income tax amendment, to repudiate their party platform, and I did not wish them to do it . . . . On Feb. 2, I introduced this resolution. The gentleman from Waterville said that this matter was pending then before the taxation committee, and I referred it to that taxation committee. What did they do? They came to the Legislature with this report, with Document No. 755, a long document, a long bill, complicated and intricate, in the last hours of the Legislature, wanting to substitute that of which the people of Maine have said nothing, of which in party convention they have taken no action, which they have not called for, which has come in here because certain men in the State of Maine came into the lobby of this Legislature and wanted a State income tax substituted for a national one; and you asked this Legislature, without any request from your political party, without any request from the people, in the last hours of the Legislature to enact a law which I have not had time to examine, which has not been discussed in this State, not discussed in the press to any extent, which we haven't time to know whether we want it or not

. . . Now, Mr. Speaker, why was this put before us? For over fifty years, yes, seventy-five years, this Nation labored under th (sic) idea that we had a right, to tax incomes in the Nation. We believed it and we acted accordingly, but it was an emergency matter only called out by war, never used on any other occasion, never contemplated to be used only in great occasions when the nation was in peril and it was called into being after seventy-five years by the late Spanish-American war. It was put up to the Supreme Court of the United States and the supreme court said that Congress had no right without an amendment to the national constitution to tax incomes incase (sic) of war, and therefore, Mr. Speaker, **we have had presented to us through Congress an amendment to the Constitution of the United States giving Congress the right to levy an income tax in case of great emergencies and in case of war,** *and for another seventy-five years if we enact that*

law and allow Congress to amend the Constitution of the United States we may never have occasion to use it. But there may be the time in this nation, **in times of great stress and peril,** when we may have occasion to tax incomes, and then we can use it; and that ought to pass. Your Governor said "The State still possesses the right to tax incomes if it desires to do so and as far as the nation is concerned we are simply affirming **the existence of a power which it was supposed to have** until very recently." Your Governor said that passing this resolve, giving our nation the authority to tax incomes, will not hinder this State from taxing incomes if they so desire. He said you ought to pass this. I believe he is right. You ought to pass this resolution. You ought not to entangle it with any other; and after you have passed it if this Democratic Legislature and the Republican minority think that they ought, without consulting their people, to enact the income tax law in the closing hours of this Legislature, that is all right. You did one part of your duty, you have kept your platform pledges. If you have gone beyond it that is your responsibility, but keep the pledge you made to the people of this State in the first instance; and I move you, Mr. Speaker, that this resolution presented by me on the second day of February, be substituted for this bill of the committee. (emphasis added)

The House adjourned for lunch. (LR at 934) After the recess, the debate continued, Mr. Hersey attempting to correct himself.

> Mr. HERSEY said: Mr. Speaker, I want to add a word to what I said this morning . . . . (T)he supreme court . . . simply decided that you could not tax incomes without a constitutional amendment.... (LR at 935)

After Mr. Hersey had added much more to what he had said in the morning session, the only member of the Committee on Taxation to vote in favor of the resolution on the federal tax amendment spoke—

> Mr. PLUMMER: Mr. Speaker, . . . it appears to be taken for granted that we are to adopt some form of an income tax . . .
>
> We have at the present time as you know nationally a tariff. We have tariff taxes and internal revenue taxes. The tariff taxes bear hardly on the poor. Generally speaking, they are apportioned to the amount of sugar a man eats or the kind and quality and amount of clothing that he wears or the jewelry that he wears. Then we have internal revenue taxes which bear on different individuals somewhat in proportion to the liquor that they drink or the tobacco that they use . . . (LR at 936)
>
> . . . an income tax . . . is so much better than the tariff that there is no comparison between them. **The tariff falls hardest on the poor, on the man with a large family who is working hard day after day to get along.** And in any tariff which has ever been framed the burden of taxation falls harder on the cheaper grades of goods. An income tax, of course, to a certain extent, or to a large extent, falls at least on those who are better able to bear it. And there is another reason urged in favor of this, that **a national income tax will have a tendency to reduce large fortunes, that it will take away from them a large part of what is called the unearned increment.** As men seem to learn very little except by experience, I think it is necessary for them to pass through this stage and find out that a national income tax or any income tax can have but mighty little effect in that direction, but they must go through this before they will be willing to look deeper.
>
> . . . it is better that (the tax) should go from the pockets of those who are able to pay than it is to take it from the pockets of the poor as there is no question but

what the tariff and internal revenue does. Another argument against (the income tax) is that Congress will waste it, that instead of reducing their taxes to correspond with this increased revenue it will increase its expenditures sufficiently to take it all up . . . .

. . . When the State goes into the pocket of the private individual and takes any part of the production of wealth, the State is stealing, it don't (sic) make any difference what you may call it; and if the State, instead of taking what does belong to it, this common wealth of the country, the value of these lands and water power and forests and shore rights and those things, if instead of having that to pay its communal expenses, if instead of taking that it gives them to some men it merely makes paupers or beggars of them. It is said that our forefathers have given away these lands and that consequently we have no right to them. Our forefathers only gave their right. They could not give away our right. The right to the use of these lands is an inherent right. We have it because we are here and not because we had it from our fathers. If they saw fit to give away their rights we have no objection but they would not give away our rights. They had neither the right nor the power to do so. I wish merely to say, Mr. Speaker, that in favoring the adoption of the income tax we relieve to some extent the shoulders of the poor from the burdens of taxation . . . . (LR at 936-939) (emphasis added)

Mr. Plummer apparently felt that the citizens of this nation should amend the Supreme Law of the land in order to find out that the amendment wouldn't do what they wanted it to do and that is apparently the reason Mr. Plummer was in favor of the national income tax.

The question was then reiterated by the Speaker—

The SPEAKER: The question before the House is on the motion of the gentleman from Houlton, Mr. Hersey, to substitute for the report of the committee, House Resolve No. 91, Resolve ratifying the proposed amendment to the Constitution of the United States giving Congress power to lay and collect taxes on incomes.

Mr. DAVIES: . . . I interpret that **the income tax would be beneficial. Its benefits might be divided into two distinct classes. First, it would bring about a more equal distribution of wealth. I doubt very much if anybody would deny that.** And secondly, it would reduce the tax on consumption . . . . In subsance (sic), the gentleman from Lisbon said that the tax was inquisitorial. Taxation itself pries into the private affairs of the individual, excepting the indirect tax which I believe was described by John Stuart Mill as being the tax that plucked the goose without making him cry out. The direct tax is not that kind of tax . . .

. . . we are the only great nation, Mr. Speaker, at the present time of great resources that finds ourselves in the position of being unable to lay a tax upon incomes . . .

. . . We must remember this, that there is not a laboring man today who does not through that method pay five or ten, yes, up to 15 per cent, at least of all the money that he earns for the support of the federal government, and **the man of large accumulations,** if you cannot get at him through the agency of the income tax there is absolutely no way to reach him. And **that is the purpose for which the Congress of the United States has submitted to the various Legislatures a resolution asking for its adoption in each State that it may have the power to lay a tax on incomes.** (LR at 940) (emphasis added)

Mr. PATTANGALL of Waterville: . . . the poor laborer contributes more to the cost of government than does the richest woman in the United States . . . . in spite of the decision of the supreme court in the year 1905, **today Congress may levy an income tax provided it observes certain limitations placed upon the**

levying of that tax by the national constitution. Under these limits Congress can act. Beyond it is it safe to say that Congress ought to go?

It was said by the gentleman from Houlton, in the course of his remarks that this was desired by Congress to use in case of emergency. Was there any emergency in the year 1904? There was no war, and yet the tariff law of 1904 contained the income tax, which the supreme court of the United States declared to be unconstitutional. In the year 1908 when we imposed the corporation tax was there any emergency? We had gotten through the panic of 1907. The revenues of the government were paying the bills. In 1908 there was no war, and yet an income tax was proposed and would have gone through excepting that in place of it was substituted a corporation income tax and the provision that the State might enlarge the powers of Congress in this respect.

Any man who has studied passing events, any man who has read the records of Congress knows that just as soon as a sufficient number of states give the right to the national government to do it, an income tax will be passed . . . . It is not an emergency measure and is not so intended. It is intended to meet what its advocates believe to be a demand to remedy what they believe to be bad conditions. They advocate it as sound in times of peace, and not merely as an emergency measure. The condition is such that in those states where incomes are smaller, the newly settled states feel that by passing an income tax they can derive from the older settled portions of the country a larger amount of money to be placed in the national treasury, not to reduce the other taxes but to place other public improvements . . . within their reach . . .

Now, Mr. Speaker, the gentleman from Yarmouth suggests that a tax upon incomes would relieve the tax upon consumption, and my mind travels far in the direction that his is going. If I were sure of that, if I had any evidence of it, if it (sic) fact the evidence was not to the contrary, I should fel (sic) like voting for both a State income tax . . . and ratifying an amendment to the national constitution in order that Congress might substitute an income tax for the tariff. But the gentleman from Yarmouth meets this question frankly and sincerely, and he knows that today we have a national income tax, an income tax upon corporations . . . . The gentleman knows that though that income tax passed Congress, it passed it as a part of the Payne-Aldrich tariff bill, a law which did not seek to reduce the tax upon consumption but rather increase it. Such a tax will not replace the tariff but added to the proceeds of the tariff will bring a larger sum, and larger still, into the United States treasury to be spent for the purposes beneficial doubtless of the whole country, but not so beneficial as I believe to the State of Maine as though we collected it ourselves and spent it ourselves . . . .

. . . President Taft went so far as to say in his campaign, good lawyer that he is, that they needed no amendment to the United States Constitution to levy an income tax if the law was properly drawn, and he said it over and over again. If that is true, and it would ill become me to question the word of so learned a jurist as President Taft, then the United States has the power now to levy upon incomes a tax if the law is properly drawn, not in the language of the proposed amendment but under such conditions and limitations as President Taft during his campaign thought proper. It has been said the Governor Hughes had endorsed the income tax. He has. And yet it was Governor Hughes' sole personal influence that prevented the New York Legislature from ratifying the offered amendment to the Constitution of the United States . . . .

. . . It is said that you can tax incomes by both the national and State law. That is true. You can as a matter of theory and law, but as a practical matter none of us would vote to do it. Such a tax would impose too great a hardship unless the national tax was extremely small and the State tax extremely small . . . . I claim that though the national government had the power for 50 years and exercised it

twice to tax incomes, national government neved (sic) had the power which this amendment seeks to confer upon it, **the power to tax incomes without limitation.** (LR at 944) (emphasis added)

* * *

Mr. PATTANGALL: . . .

. . . I never expect to rise to a height where I will have income enough to be touched by any tax anybody will ever propose . . . (LR at 948) (emphasis added)

Mr. AUSTIN of Phillips: . . .

. . . I fully believe that as long as this government was amalgamated into a government of states and into a federal government, simply from the reason that the states themselves as a federation would not stand for direct taxation of the federal government and taxation by the State at the same time—I believe for that very reason, the states being amalgamated into one union, was the reason they would not stand for the two systems of taxation and is the very reason why we should keep this system of taxation out of the constitution. (LR at 949)

* * *

Mr. CHASE of York: . . . I believe (the proposed Sixteenth Amendment) is granting a most tremendous power to the United States government in addition to what they have now. I think the government of the United States has power enough at the present time . . . . The proposed amendment gives to Congress the right to assess and collect taxes on all kinds of incomes, from whatever source they may be acquired. There is no doubt in my mind but what Congress will use that power when they need it. (LR at 949)

* * *

The SPEAKER: The question before the House is on the motion of the gentleman from Houlton, Mr. Hersey, who moves that Resolve ratifying the proposed amendment to the Constitution of the United States giving Congress power to lay and collect taxes on income, be substituted for the report of the committee. Those voting yes will vote in favor of the motion to give Congress the power to levy and collect taxes; those voting no, will vote against the proposition. The Clerk will call the roll.

YEA . . . 53.

NAY . . . 82.

ABSENT . . . 14.

So the motion was lost. (LR at 950)

The additional result of the foregoing vote was that the resolution on the ratification of the proposed Sixteenth Amendment, if it was to be properly before the House would have to be introduced by unanimous consent.

On March 30th, in the Senate, another debate took place—

Mr. OSBORN of Somerset: . . . (LR at 1016)

. . . Now it is a well known fact that the question in regard to an income tax meant a Federal income tax assessed by the national government for **state purposes** . . . . a distinguished statesman, who is now the President of the United States, took the ground in his campaign speeches in several of the Western States, where it was well known that the idea of a Federal income tax was popular, that the Constitution ought to grant the right to the national government to levy a tax upon income and that a bill might be drawn that would not be thrown out of court. Yet when that matter was under discussion in Congress, the President, for reasons of his own, I know not what, appeared to change his mind—the constitutionality of the matter was a matter of such grave doubt that

it should be referred to the people. (LR at 1017) . . . **If men of large incomes** in this nation are taxed for a part of the nation's support they will become interested in power of appropriations . . . . We are of course familiar with the vast increase in the national expenditures in recent years, and those expenditures have borne heavily upon the **average citizen** throughout the length and breadth of the land . . . . if you increase the expenditures of your government and increase the burden upon the average citizen, you will make it more difficult for him to meet the difficulties of every day life. And there rests the proposition of the advance in the cost of living. It is due to the advance in the cost of government more than to any other cause . . . . Now Mr. President, I move you that a resolve that I have here in regard to this matter of an income tax be substituted for that bill as reported, if in order.

The question being upon the acceptance of the report of the committee, the Senator from Somerset moved to nonconcur with the action of the House, and substitute the Resolve **presented by himself.** (emphasis added)

Mr. NOYES of Somerset: Mr. President: As a member of the Taxation committee, we took this matter up very thoroughly from time to time. I will admit that it was a very hard question to get at, and they felt that they rather favored a state income tax, but to get it fairly before the Legislature the Resolve introduced was to favor a state income tax, and if that was not reported favorably on by the Legislature, then we asked them to report favorably on the national income tax, and left it to the Legislature. One of the hard things that the committee found in regard to the national tax was that there was no proportional part that would come back to the State (at 1018) . . . .

Mr. IRVING of Aroostook: . . . when we (the taxation committee) did begin to investigate, and the more we did dig into the working of the Bill, the change came about, that we didn't want to do it. We repudiated the idea of allowing the Federal Congress—allowing Congress to come into our State and assess our incomes and have the money go into the national treasury . . .

Now **the national resolve, or the 16th amendment to the federal constitution, it seems to me is sweeping,** and perhaps not all of the members of the Senate have read or comprehended just what the amendment is or how it reads. It reads like this: "Congress shall have power to levy and collect taxes on incomes from whatever source derived without apportionment among the several states and without regard to any census or enumeration." You can see by the reading of that that we give them absolute power to do what they will—from any source whatever to tax incomes under the provisions of that amendment. Now, do we want to give Congress that power to tax incomes from whatever source derived? Would it be a wise thing to do? It has been urged by our people, and I think urged quite frequently, that Congress is extravagant, that they do expend large sums of money . . . (LR at 1019) (emphasis added)

. . . You can see that nine of the 10 men (on the taxation committee) favor an income tax and were opposed to a federal income tax. And that report was caused by the fact that we did inquire into the merits and the demerits of the case, and a change of heart was brought about in the case of those nine men, because **at first every man of them was in favor of the Federal income tax** . . . . if we vote to ratify the 16th Amendment to the Federal Constitution and allow the Federal government to assess a tax on our income, we never can change it. If we once allow them the privilege, we are forever prohibited and cannot change it, if we allow them to incorporate it into the Constitution of the United States . . . . (LR at 1020) (emphasis added)

Although nine of the ten members of the Committee on Taxation, based upon weeks of study, were "opposed to a federal income tax," Senator Osborn re-asserted his

platform pledge argument. (LR at 1020) After a response, Senator Osborn continued.

> Mr. OSBORN: . . . The simple question is which will affect the people the most, to pay a part of this money out of a tax on **large incomes** or to pay all of it by a tax upon **the necessities of life of the average man.** And I hope we shall not get led away on that proposition.
>
> Mr. BOYNTON: May I ask—the question before the House, as I understand it, is upon the bill, resolve—the order which he made, introduced by the senator from Somerset, Senator Osgood (sic). Will the Senate cause that to be read that we may know what it is.
>
> The PRESIDENT: The resolve is Resolve ratifying a proposed amendment to the Constitution of the United States giving Congress power to levy an income tax on the states.
>
> Mr. BOYNTON, of Lincoln: Mr. President: I think we have all, or it has been our duty at least to have studied this question and know exactly how we want to vote and what we want to do. Now to bring this matter before the Senate properly I will move the indefinite postponement of the resolve offered by the senator from Somerset, and later will move to concur with the House in acceptance of the majority vote, and upon that motion I would ask the yeas and nays, upon the indefinite postponement of the resolve of the senator from Somerset. (LR at 1021) (emphasis added)
>
> Mr. MILLIKEN, of Aroostook: . . .
>
> . . . on the 28th day of March . . . the Democratic House of Representatives repudiated that pledge made to the people of Maine.
>
> . . . Yesterday the ratification of the income tax amendment was defeated . . . (LR at 1022)

Senator Milliken was admitting on the record that the "income tax amendment" had died in the Maine House. Procedurally, it would require a unanimous consent to be introduced at that point. Senator Osborn confirmed—

> Mr. OSBORN: Mr. President: To make myself clear, I want to say this: I understand that my resolution cannot be received **except by unanimous consent.** Now I have no doubt but what there are some gentlemen here who will object to it and get it out of here, and we should not get any vote here if we adopted this State income tax. Now that is my position. I want to express myself on this matter by vote, that is all. (LR at 1023) (emphasis added)
>
> * * *
>
> Mr. BOYNTON: Unless the Senator from Somerset wishes to withdraw his resolution I would now ask that the question be put and that the yeas and nays be ordered on its indefinite postponement.
>
> Mr. GOWELL, of York: Mr. President: Do I understand that the resolve offered by the senator from Somerset is an endorsement of the national income tax pure and simple?
>
> The PRESIDENT: It is.
>
> Mr. IRVING: Mr. President: In case we vote to indefinitely postpone this resolution of the senator from Somerset, we still have a chance to act on the federal income tax on the report of the committee. The question being on the indefinite postponement of the resolve offered by Mr. Osborn of Somerset, ratifying the proposed amendment to the Constitution of the United States and authorizing Congress to impose a tax on incomes in the states, the yeas and nays were ordered and the secretary called the roll. Those voting yea were . . . 18. Those voting nay were . . . 9.
>
> So the resolve was indefinitely postponed.

Mr. BOYNTON: Mr. President: I now move that we concur with the House in the acceptance of the majority report.

The PRESIDENT: The senator from Lincoln moves that the Senate concur in the action of the House in adopting the majority report of the committee.

Mr. MILLIKEN: Mr. President, may I understand the situation. If we adopt now the majority report and pass the bill in concurrence with the House, this is the only income tax bill that we are offered by the House. If the House adheres to its present action and the bill goes through this will be the only bill that we can accept. If the House should afterward turn this bill down, we can then have an opportunity to vote on the federal income tax bill. With that understanding I vote that this bill be adopted.

In other words, the House would have to reject the State income tax bill **before** the Senate could vote on the proposed Sixteenth Amendment. The discussion continued, but on the wrong bill.

The PRESIDENT: The senator from Lincoln moves that the Senate now concur in the action of the House in adopting the majority report of the committee on taxation.

Mr. MULLEN: I don't think I am anywheres near through on this proposition. I would like to inquire just what bill the House presents to vote on. Is it 764?

The PRESIDENT: 764.

* * *

Mr. MULLEN: Mr. President, I want to call attention to line 6 in Section 5, and I would like to ask the Senate members of the committee if this Bill as drawn is the proper Bill and if it is right as they understand it . . . .

Mr. IRVING: Mr. President: I would say to the Senator that this is a new draft as amended in the House. This is not the regular Bill that came from the Taxation committee.

Mr. MULLEN: Mr. President: For the benefit of the Senators and myself too, to make myself clear, I have heard it rumored in the corridors and all around that there is a joker in this. I don't know whether it is sincere or whether it is not . . . but I want to know that we are getting the law when I vote on it, and I am not a lawyer, so I will ask the question, Mr. President and Senators, at this time, and this Bill as printed here certainly does not mean anything at all.

Mr. OSBORN: Mr. President: I request that before we have a vote upon that measure, that it be read in the final draft, and I should also like to ask the opinion as to the legality of it of some of our lawyers here.

Mr. MAYO: Mr. President: I am on that taxation committee and I notice on page 3 of this law, lines 19 and 20, something that I had never seen before and that is the exception—except salaries of the United States Judge and Judges of the Supreme and Superior Courts of the State. It might have been there, but I didn't notice it.

The PRESIDENT: That has been put in by amendment of the House.

* * *

The question being on the motion of the senator from Lincoln, that the Senate concur with the House in the acceptance of the majority report of the committee on taxation on this Resolve.

The secretary called the roll. Those voting yea were . . . 17. Those voting nay were . . . 9.

So the majority report of the committee was accepted in concurrence.

The resolve was given its first reading.

Mr. GOWELL of York: Mr. President: Pending second reading, I move that

the resolve be tabled. If I am correctly informed there should be some amendments offered if it is to become a law.

The motion was agreed to. (LR at 1024) (emphasis added)

Thus, the Senate voted in concurrence with the House to accept the majority report recommending a State income tax, effectively blocking further consideration of the ratification resolution in the Senate except by unanimous consent or until after the House disavowed its own action in the State income tax bill. Later that day, House Bill 764 was taken from the table by motion. (LR at 1039)

> Mr. STAPLES of Knox: Mr. President: . . . **The object of a national income tax would be to reach those men of great fortune** that we cannot reach in any other way . . . (LR at 1040) (emphasis added)

Upon motion of Senator Staples, House Bill 764 was indefinitely postponed—

> Those voting yea were . . . 16. Those voting nay were . . . 9.
> So the bill was indefinitely postponed. (LR at 1042)

At this point, the House resolution on the proposed Sixteenth Amendment was brought up for consideration after the Senate had accepted the majority report which recommended a State income tax.

> Mr. MILLIKEN: Mr. President: Is there not a national income tax law mixed up with this committee?
>
> The PRESIDENT: Yes. The Chair now rules that the Senate may consider that part of the report that applies to the national income tax.
>
> Mr. MILLIKEN: Mr. President: I move that the resolve giving Congress power to lay and collect a tax on incomes be adopted . . .
>
> Under suspension of the rules, the resolve received its two readings and was passed to be engrossed. (LR at 1042)

Since Senate rule 29 states that "No rule shall be dispensed with, except by the consent of two-thirds of the members present," the Senate, failing to properly suspend the rules, also violated Senate Rule 18—

> All bills and resolves in the second reading shall be committed to the committee on bills in the second reading, to be by them examined, corrected, and so reported to the senate.

Later that day, the 30th, the Senate took up for consideration a House resolution which had not yet passed the House—

> House document 91. Resolve ratifying the proposed amendment to the Constitution of the United States, giving Congress power to lay and collect taxes on incomes, came from the House amended by the adoption of House amendment A, "That the Secretary of State be directed to notify the Secretary of State of the United States of the passage of this resolve."
>
> The amendment was adopted in concurrence. (LR at 1045)

The foregoing was a Senate vote upon House amendment A which also had not yet been considered by the House. This particular House bill was in the same position procedurally as Senator Osborn's resolution had been—it required unanimous consent to be introduced. Nevertheless, the Senate took up House Bill No. 91.

> On motion by Mr. MILLIKEN of Aroostook, "Resolve ratifying the proposed

amendment to the Constitution of the United States, giving Congress power to pay and collect taxes on incomes," (House Document No. 91), was adopted, in accordance with the provisions of the majority report.

On further motion by the same Senator, the resolve was read twice under suspension of the rules, and passed to be engrossed.

Sent down for concurrence. (SJ at 697) (emphasis added)

The foregoing Senate action was a passage of House Document No. 91 to a final draft.

The House then received the following communication from the Senate, also on the 30th—

> Bill taxing incomes of the State, came from the Senate, that branch noncurring (sic), with the action of the House and passing the federal income tax bill. (LR at 1070)

According to Senate rule 8, there is no such response to the presentation of legislation from the House for concurrence by the Senate as "noncurring."

This message, however, caused the House, on the 30th, to take up House Bill No. 91 without it actually having originated in the House by a successful vote upon a report out of committee or upon a substitute—

> The SPEAKER: The question is on House Bill 91, Resolve ratifying the proposed amendment to the Constitution of the United States, giving Congress power to lay and collect taxes on incomes. Is it the pleasure of the House that this resolve receive a passage?
>
> It was agreed to.
>
> The resolve then received its first reading.
>
> Mr. Davies offered Amendment A, that the secretary of State be directed to notify the secretary of state at Washington, D. C., of the action of this Legislature. The amendment was adopted.
>
> The resolve then received its second reading as amended and was passed to be engrossed in concurrence. (LR at 1071)

This order of events shows that the Senate adopted the Amendment A of Mr. Davies prior to its ever having been offered in, and then adopted by, the House, as shown by this entry in the Legislative Record. The Senate journal then shows the following action taking place later on the 30th—

> "Resolve ratifying the proposed amendment to the Constitution of the United States, giving Congress power to pay and collect taxes on incomes," (House Document No. 91), which was passed to be engrossed by the Senate earlier in the day, came from the House passed to be engrossed, as amended by House amendment "A."
>
> On motion by Mr. MILLIKEN of Aroostook, the vote was reconsidered whereby the bill was passed to be engrossed, House amendment "A" adopted in concurrence, and the bill was read twice under suspension of the rules, and passed to be engrossed as amended in concurrence. (SJ at 698) (emphasis added)

House Amendment A apparently was re-adopted in the proper sequence at this point, House Bill No. 91 being engrossed exactly as it had been previously on the 30th in the Senate, including the change of the title from "Resolve ratifying the proposed amendment to the Constitution of the United States, giving Congress power to lay and collect taxes on incomes" to "Resolve ratifying the proposed amendment to the Constitution of

the United States, giving Congress power to pay and collect taxes on incomes."

In the passage in the House of House Bill 91, House Rule No. 3 was violated—

> The clerk shall keep a journal of what is done by the house; . . . note the answers of members, when the house orders **or when a question is taken by yeas and nays . . .**

This violation is confirmed by the House journal which shows the purported final tally but not the yeas and nays on roll call—

> Resolve ratifying the proposed amendment to the Constitution of the United States, giving Congress power to lay and collect taxes on incomes,
>
> Came up for final passage,
>
> This Resolve **required a two-thirds vote for final passage.** A division of the House was had, and 101 voted for the final passage of the Resolve and none against the same. Hence the Resolve was finally passed. (HJ at 902) (emphasis added)

The Senate journal then shows that on the 31st the final passage of the following resolution took place without a vote—

> "Resolve ratifying the proposed amendment to the Constitution of the United States, giving Congress power to lay and collect taxes on incomes";
>
> Which bills were passed to be enacted, and the resolves were finally passed, in concurrence, and having been signed by the President, were by the Secretary presented to the Governor for his approval. (SJ at 707)

At no time was any vote recorded upon House Bill No. 91 in the Senate, as is confirmed by Senate Document No. 240 of the 71st Congress, (see Appendix) as well as by the Senate journal.

The resolution as purportedly passed and transmitted to Washington, D. C. read as follows:

STATE OF MAINE.

> Resolve ratifying the proposed amendment to the Constitution of the United States, giving Congress power to lay and collect taxes on incomes.

> Resolved, that whereas the Congress of the United States has proposed an amendment to the Constitution of the United States which provides that "The Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several states and without regard to any census or enumeration.
>
> And whereas it requires the ratification of three-fourths of all the states to make the proposed amendment a part of the constitution,
>
> Therefore, resolved, that the legislature of Maine ratifies and adopts the proposed amendment to the federal constitution. That the secretary of state be notified the secretary of state at Washington, D. C., of the action of the legislature.

Though they had a certified copy of the Congressional Joint Resolution in their possession, having been printed after its transmission by Governor Fernald, the legislators of Maine made the following changes to the official Congressional Joint Resolution—

1. the original preamble was discarded
2. the designation "Article XVI." was deleted
3. all commas were deleted
4. the word "States" was changed to a common noun

All such changes were in violation of the duty which the Maine Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed amendment to the Supreme Law of the land.

In addition, the copy of this resolution which was received by Washington was signed only by the Secretary of State of Maine.

The Legislature of the State of Maine committed the following violations in their purported ratification of the proposed Sixteenth Amendment—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that House Bill No. 91 contained the following changes to the official Congressional Joint Resolution—

a. the original preamble was discarded
b. the designation "Article XVI." was deleted

c. all commas were deleted

d. the word "States" was changed to a common noun

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

3. Failure to re-submit House Bill No. 91 after its rejection by both House and Senate in favor of the majority report, i. e., consideration of No. 91 in both houses without the required unanimous consent

4. Failure to record the votes on passage of House Bill No. 91 in both the House and the Senate 5. Failure to vote on House Bill No. 91 in the Senate

Tennessee—April 7th, 1911

On January 12th, 1911, a telegram from a Jno. W. Gaines was sent to Philander Knox, Secretary of State of the United States, informing Knox that the State of Tennessee was without a certified copy of the Congressional Joint Resolution—

> Close search today in office of the Governor and Secretary of State develops the fact that no copy of proposed sixteenth amendment to Constitution of the United States to empower Congress to levy an income tax is on file in either office. Have forwarded to proper authority here copy said instrument.

Upon receiving that telegram, Knox immediately sent a certified copy of the resolution to Tennessee on January 13th, 1911 and a telegram to Mr. Gaines informing him of that action—

> A Certified copy of the proposed Amendment to the Constitution has been sent to the Governor of Tennessee today.

No previous acknowledgement letter from the State of Tennessee exists.

Shortly after receiving their certified copy of the Congressional Joint Resolution, a ratification resolution was introduced in the Senate of Tennessee, on the 25th of January, 1911—

> By consent of the Senate, Mr. Jones introduced Senate Joint Resolution No. 14—To adopt an amendment to the Federal Constitution.
> Under the rules, the resolution lies over. (SJ at 118)

In so doing, the Senate of Tennessee was immediately in violation of Article II, Section 32 of the State Constitution which provided that—

> No Convention or General Assembly of this State shall act upon any amendment of the Constitution of the United States proposed by Congress to the several States; unless such Convention or General Assembly shall have been elected **after** such amendment is submitted. (emphasis added)

Obviously, the Tennessee Legislature of 1911 could not have been elected after the submission of the certified copy of United States Senate Joint Resolution No. 40 which had just been transmitted on January 13th, 1911.

The next day, S. J. R. No. 14 was referred to the Committee on Constitutional Amendments. (SJ at 122) The Index in the journal indicates that this entry represents the adoption of S. J. R. No. 14.

Over two months later, on April 6th, 1911, S. J. R. No. 14 was favorably reported out of committee as amended, though no indication is given about the amendment to the

resolution. (SJ at 529) S. J. R. No. 14 was then taken up for a vote on the amendment to the resolution—

> By consent of the Senate, Mr. Adams was allowed to call up Senate Joint Resolution No. 14—To ratify the proposed income tax amendment to the Federal Constitution.
>
> The Committee on Constitutional Amendments offered an amendment to the resolution in the nature of a substitute, which was, on motion, adopted by the following vote:
>
> Ayes . . . 24
> Noes . . . 4
> Senators voting aye were: . . . -24.
> Senators voting no were: . . . -4. (SJ at 529)

This journal entry is listed in the Index of the journal under "Other Action," which is logical, since it may be seen that the above recorded vote is upon an amendment to the resolution and not upon the resolution itself.

That same day, however, S. J. R. No. 14 was found correctly engrossed and ready to transmit to the House. (SJ at 539) If the Senate considered the previous vote on an amendment to S. J. R. No. 14 to be a vote upon S. J. R. No. 14 itself, that determination was premature at best, in that S. J. R. No. 14 was never properly read in the Senate in violation of Article II, Section 18 of the State Constitution which provided that—

> Every bill shall be read once, on three different days, and be passed each time in the House where it originated, before transmission to the other. No bill shall become a law, until it shall have been read and passed, on three different days in each house, and shall have received, on its final passage in each house, the assent of a majority of all the members, to which that house shall be entitled under this constitution;

S. J. R. No. 14 not only was required to be read on three different days, it was necessary that, at each of those readings, the resolution be passed by vote to the next reading.

Nevertheless, S. J. R. No. 14 was sent on to the House for concurrence. (HJ at 718)

The following day, the 7th of April, S. J. R. No. 14 was taken up in the following manner—

> Senate Joint Resolution No. 14—Relative to income tax.
> Mr. Worley moved that the resolution be rejected.
> On motion of Mr. Puryear, the motion to reject was tabled.
> Mr. Worley moved that the resolution be tabled.
> The motion to table failed by the following vote:
> Ayes . . . 9
> Noes . . . 77
> Representatives voting aye were: . . . -9.
> Representatives voting no were: . . . -77.
> Thereupon the resolution was concurred in by the following vote:
> Ayes . . . 82
> Noes . . . 3
> Representatives voting aye were: . . . -82.
> Representatives voting no were: . . . -3.
> A motion to reconsider was tabled. (HJ at 769)

As in the Senate, the passage of S. J. R. No. 14 in the House violated Article II, Section

18 of the Tennessee State Constitution. A message was transmitted to the Senate, that same day, informing them that the House had concurred in S. J. R. No. 14. (SJ at 592) S. J. R. No. 14 was then found correctly enrolled and sent to the Speaker for his signature. (SJ at 595) The Speaker then announced the signing of S. J. R. No. 14. (SJ at 596)

On the 10th, S. J. R. No. 14 was sent back to the House for the signature of the Speaker of the House. (HJ at 772) (HJ at 774)

On April 11th, Governor Hooper returned S. J. R. No. 14 to the Senate with his signature. (SJ at 639) Shortly thereafter, S. J. R. No. 14 was delivered to the Secretary of State. (SJ at 640)

Whatever form S. J. R. No. 14 may have taken, it violated Article II, Sections 28 and 29 of the Tennessee State Constitution, which provided that—

> . . . The Legislature shall have power to levy a tax upon incomes derived from stocks and bonds that are not taxed **ad valorem.**
>
> The General Assembly shall have power to authorize the several Counties and incorporated towns in this State, to impose taxes for County and Corporation purposes respectively, in such manner as shall be prescribed by law; and all property shall be taxed according to its value, upon the principles established in regard to state taxation.

The Legislature of Tennessee had the authority to levy taxes upon stocks and bonds that were not otherwise taxed according to value and the authority to confer the power to tax upon county and municipal corporations within the State according to State taxation methods. The Legislature did not have the authority to confer any other taxing powers to cause taxes to be levied upon the people of the State of Tennessee.

Accompanied by a certificate signed by Governor Hooper, the Secretary of State of Tennessee transmitted two unsigned copies of S. J. R. No. 14 to Knox. The text of that document, never having appeared in the journals, read as follows—

> **SENATE JOINT RESOLUTION NO. 14**
>
> WHEREAS, The Sixty-first Congress of the United States of America at its first session begun and holden at Washington, in the District of Columbia, on Monday, the 15th day of March, 1909, by joint resolution proposed an amendment to the Constitution of the United States in words and figures as follows, to wit:
>
> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid in all intents and purposes as a part of the Constitution.
>
> "ART. XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."
>
> **Now, therefore, Be it resolved by the Senate and House of Representatives of the State of Tennessee**, that said amendment to the Constitution of the United States be and is hereby ratified: and **Be it further resolved**, That certified copies of the foregoing preamble and resolution be forwarded by His Excellency the Governor of Tennessee to the President of the United States, to the Secretary of State of the United States, to the presiding officer of the United States Senate, and to the Speaker of the House of Representatives, respectively.

Adopted April 7, 1911.
N. BAXTER, JR.,
Speaker of the Senate.
Approved, April 11, 1911.
A. M. LEACH,
BEN W. HOOPER, Governor.
Speaker of the House of Representatives.

The Solicitor of the Department of State in his memorandum of February 15th, 1913 to Knox lists the legislation of the State of Tennessee as without error. That isn't precisely true. The following changes are evident in the text of S. J. R. No. 14 as transmitted to Washington, D. C.—

1. the preamble was changed—

a. the phrase "to all intents and purposes" was changed to "in all intents and purposes"

b. the closing colon was changed to a period.

2. the designation "Article XVI." was changed to "ART. XVI."

An "error" in the designation in Delaware is duly noted by the Solicitor, while this obvious intentional change is not.

The force of the Solicitor's own words testify to the error in his assessment of S. J. R. No. 14 being without "error." Any change in the official resolution was a violation of the duty which the Tennessee Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor, in the memorandum responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments,** either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must

> prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

In a recent search of the Tennessee State Library and Archives and of the Tennessee Secretary of State's files performed by State officials, the only material found in either location which related to a resolution in ratification of the proposed Sixteenth Amendment was for House Joint Resolution No. 46 which died in both houses of the Tennessee Legislature of 1911. There is apparently no original documentation for S. J. R. No. 14.

Thus, the purported ratification of the proposed Sixteenth Amendment by the Legislature of the State of Tennessee was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. R. No. 14 as received by Washington contained the following changes to the official Congressional Joint Resolution—

a. the preamble was modified

b. the designation "Article XVI." was changed to "ART. XVI."

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

3. Failure of both the House and Senate to read and pass S. J. R. No. 14 on three different days in violation of Article II, Section 18 of the Tennessee State Constitution

4. Violation of Article II, Section 32 of the Tennessee State Constitution in that the Legislature took action upon an amendment to the United States Constitution before it was authorized to do so.

5. Violation of Article II, Sections 28 and 29 of the Tennessee State Constitution in that the Legislature did not have the authority to confer the taxing power which S. J. R. No. 14 comprehended

6. Failure of the Senate to vote on S. J. R. No. 14

Arkansas—April 22nd, 1911

On August 2nd, 1909, Governor George W. Donaghey of Arkansas sent a letter to Philander Knox, Secretary of State of the United States, acknowledging receipt of the certified copy of Senate Joint Resolution No. 40.

In the next session of the Arkansas Legislature, in 1911, a ratification resolution was introduced in the House, but that resolution was rejected in the Senate. On March 28th, the Governor transmitted official notice of the rejection to Knox—

> Said proposed amendment was passed by the House of Representatives, but failed to pass in the Senate of said Thirty Eighth General Assembly of the State of Arkansas.

On April 5th, another resolution to ratify the proposed Sixteenth Amendment was introduced in the Arkansas Legislature, this one in the Senate—

> Senate Joint Resolution No. 7, by Senator Rodgers of Benton, approving a proposed amendment to the Constitution of the United States, being special order was read third time, Senator Covington made the point of order that the resolution was out of order and that it be postponed until April 12th. (SJ at 306)

There having been no previous reading of S. J. R. No. 7 in the Senate, Senator Covington was quite right in having S. J. R. No. 7 postponed a week, so that the Senate might have a chance to correct a situation in violation of Article V, Section 22 of the Arkansas State Constitution which provided that—

> Every bill shall be read at length on three different days in each house, unless the rules be suspended by twothirds of the house, when the same may be read a second or third time on the same day; and no bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the persons voting for and against the same be entered on the journal, and a majority of each house be recorded thereon as voting in its favor.

The Senate, not having read S. J. R. No. 7 the first two times during the preceding week, the resolution was again taken up as a special order in the following manner, on the 12th as scheduled—

> Senate Joint Resolution No. 7, by Mr. Rodgers of Benton, ratifying and approving the proposed amendment to the Constitution of the United States, relating to income tax, being special order, was read third time.
>
> Senator Martin moved that the resolution be postponed until April 13th at 2 p. m.
>
> Roll call was ordered on the motion.
>
> The Secretary called the roll and the motion failed.

On motion of Senator White, the Senate at 11:40 a. m. took a recess till 2 p. m. (SJ at 331)

So, the Senate had apparently decided not to postpone the vote on S. J. R. No. 7 another day. Following the recess, consideration of S. J. R. No. 7 was postponed another five days, until the following Monday. (SJ at 332)

On Monday, the 17th, S. J. R. No. 7 was taken up for the third reading the third time without any previous readings (first or second) having taken place to that point—

> Senate Joint Resolution No. 7, by Mr. Rodgers of Benton, being special order, was taken up.
>
> Senator Covington moved to indefinitely postpone the resolution.
>
> Roll call was ordered on the motion.
>
> The Secretary called the roll and the following Senators voted in the affirmative:
>
> . . . Total, 6.
>
> In the negative: . . . Total, 20. Absent and not voting, 9.
>
> So the motion lost. (SJ at 342)

Again, a motion was lost to postpone consideration of S. J. R. No. 7. Consideration of S. J. R. No. 7 was taken up later that day with the following result—

> Senator CarlLee (sic) moved the previous question and the call was sustained, the question being, shall the resolution pass (sic)
>
> The Secretary called the roll and the following Senators voted in the affirmative:
>
> . . . Total, 24.
>
> In the negative: . . . Total, 6.
>
> So the resolution passed. (SJ at 346)

S. J. R. No. 7 was introduced in the House on the next day, the 18th, as follows—

> I am instructed by the Senate to inform your honorable body of the passage of Senate Joint Resolution No. 7, by Senator Rodgers of Howard, the same being an amendment to the Federal Constitution for an income tax, and I herewith transmit the same for your favorable consideration. (HJ at 837)

On the 21st of April, S. J. R. No. 7 was taken up—

> Senate Joint Resolution No. 7 by Senator Rodgers of Benton, as follows, to-wit:
>
> Joint Resolution of the Legislature of the State of Arkansas ratifying and approving the proposed amendment to the Constitution of the United States relative to income tax.
>
> Whereas, the Sixty-first Congress of the United States of America, at the first session begun and held in the city of Washington, on Monday the 15th day of March, 1909, proposed an amendment to the Constitution of the United States, in words and figures as follows:
>
> Article XVI. Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several states, and without regard to any census or enumeration.
>
> Now, therefore, be it resolved by the legislature of the State of Arkansas, that the foregoing resolution, being the sixteenth amendment to the Constitution of the United States, be, and the same is hereby, approved and ratified.
>
> Adopted by the House of Representatives, the __ of ____ . . .

* * *

Was read the first time, rules suspended and read the second time and made a special order for tomorrow morning immediately after the reading of the journal. (HJ at 857)

The next day, S. J. R. No. 7 was taken up for a vote, after the third reading, in the following manner—

> Senate Joint Resolution No. 7, by Senator Rodgers, of Benton, the same being a joint resolution of the Legislature of the State of Arkansas, ratifying and approving the proposed amendment to the Constitution of the United States relative to income tax.
>
> Whereas; the Sixty-first Congress of the United States of America, at the first session begun and held in the City of Washington, on Monday the 15th day of March, 1909, proposed an amendment to the Constitution of the United States, in words and figures as follows:
>
> Article VXI (sic). Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several states, and without regard to any census or enumeration;
>
> Now, Therefore, be it resolved by the Legislature of the State of Arkansas: That the foregoing resolution being the eixteenth (sic) amendment to the onstitution (sic) of the United States, be, and the same is hereby approved and ratified.
>
> Adopted by the House of Representatives, the __ of ____ . . .
>
> The same being a special order for this hour, was read the third time and placed on final passage.
>
> The question being, "shall the bill pass?" the Clerk called the roll when the following voted in the affirmative:
>
> . . . Total, 54.
>
> The following voted in the negative:
>
> . . . Total, 2.
>
> The following were absent and did not vote:
>
> . . . Total, 44.
>
> So Senate Joint Resolution No. 7, was adopted.
>
> Mr. Parker, of Ouachita, moved that the vote by which Senate Joint Resolution No. 7, was passed be reconsidered and that motion be laid upon the table, which motion prevailed and the motion to reconsider was laid on the table. (HJ at 864)

Over a month passed before the following letter, accompanied by a copy of S. J. R. No. 7, was sent by a Deputy Secretary of State to Knox, on June 8th, 1911, which stated—

> In pursuant (sic) to the Constitution of the United States of America I herewith transmit to you a certified copy of Senate Joint Resolution No. 7, ratifying and approving the proposed amendment to the Constitution of the United States relative to income tax, passed by the respective bodies of the Arkansas Legislature during the session of 1911 of the thirty eighth General Assembly.

A memorandum, dated June 12th, was transmitted to a Mr. Clark, apparently of the State Department, by someone named Tonner, of the Bureau of Rolls and Library, also of the Department of State, asking Mr. Clark what should be done about the transmittal of Arkansas—

> The Secretary of State of the State of Arkansas has forwarded a certified copy of a Joint Resolution of the Legislature of that State ratifying the proposed Income Tax Amendment to the Constitution, which shows that it was vetoed by the

Governor.

An opinion is therefore desired as to whether the Department should include Arkansas in the list of States which have ratified the Amendment.

In the margin of the memorandum, Mr. Clark's answer is handwritten—

Yes—at least for present time.

A more definitive answer would be forthcoming from the Solicitor of the Department of State. In his memorandum of February 15th, 1913, the Solicitor made some remarks about the Arkansas situation. First, he commented on the date of ratification, claiming that April 22nd, 1911 was the—

Date passed by legislature. Governor vetoed June 1, 1912. March 28, 1911, Governor informed Secretary of State legislature had failed to pass resolution. So first rejected and subsequently ratified. (at 4)

Feeling a need to explain himself, the Solicitor expounded upon Arkansas on the next page of that memorandum—

Ratification by Arkansas. Power of the governor to veto.

It will be observed from the above record that the Governor of the State of Arkansas vetoed the resolution passed by the legislature of that State. It is submitted, however, that this does not in any way invalidate the action of the legislature or nullify the effect of the resolution, as it is **believed** that the approval of the Governor is not necessary and that he has not the power of veto in such cases. (emphasis added)

The Solicitor, in categorizing the intentional changes which the various State Legislatures had made to the Congressional Joint Resolution as "errors," said that it seemed "a necessary presumption, in the absence of an express stipulation to the contrary, that a legislature did not intend to do something that it had not the power to do . . . " Apparently, the Solicitor applied the same sort of logic to the veto of the Governor of Arkansas, i.e., since the Governor had not the power to veto S. J. R. No. 7, he didn't intend to do it, he did it in error, by mistake. Of course, the Governor did have the power to do it and he did do it and not by mistake. According to the provisions of Article VI, Section 16 of the Arkansas State Constitution—

Every order or resolution in which the concurrence of both houses of the General Assembly may be necessary, except on questions of adjournment, shall be presented to the Governor, and before it shall take effect, be approved by him; or being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in the case of a bill.

In that the Governor of Arkansas vetoed S. J. R. No. 7 and the Arkansas Legislature failed to repass that resolution, it was not valid.

But, S. J. R. No. 7 could not have been under the purview of Article VI, Section 16. Article XVI, Section 11 of the Arkansas State Constitution provided that—

No tax shall be levied except in pursuance of law, . . .

and Article V, Section 21 provided that—

No law shall be passed except by bill . . .

Therefore, S. J. R. No. 7 was required to have been legislated as a bill.

Article XVI, Section 11 goes on to require that—

> . . . every law imposing a tax shall state distinctly the object of the same; . . .

S. J. R. No. 7 does not distinctly state the object to which the tax to be imposed under that resolution will be applied and, therefore, violates this provision of the State Constitution.

Dated June 1st, 1911, the certificate accompanying the transmittal letter of the Deputy Secretary of State of Arkansas indicated that "Senate Joint Resolution No. 7, by Senator Rogers of Denton County" had, indeed, been "(v)etoed by the Governor June 1st, 1911." This certificate further indicated that the vote in the House, on April 22nd, was "Total ayes 64, total nayes (sic) 7, absent and not voting 29." That tally is not what the journals had reported, the tally in that document having been 54 ayes, 2 nays, and 44 absent and not voting. The number of ayes in the tally in the Senate is blotted out on the certificate, however, the rest of the vote in that house is reported as ". . . total nays, 6, absent and not voting, 5." That tally is, also, not what the journals had reported. Either the journals are false in these tallies, or the certificate of the Secretary of State of Arkansas is fraudulent, or both.

The copy of S. J. R. No. 7 sent to Washington, was unsigned and the text read as follows—

> Senate Joint Resolution No. 7.
> (By Senator Rogers (sic) of Benton County.)
>
> JOINT RESOLUTION of the Ligislature (sic) of the State of Arkansas ratifying and approving the proposed amendment to the Constitution of the United States relative to income tax.
>
> WHEREAS, The Sixty-first Congress of the United States of America, at the first session begun and held in the city of Washington, on Monday the 15th day of March, 1909, proposed an amendment to the Constitution of the United States, in words and figures as follows:
>
> Article XVI. Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several states, and without regard to any census or enumeration:
>
> NOW, THEREFORE, be it resolved by the legislature of the State of Arkansas, That the foregoing resolution, being the sixteenth amendment to the Constitution of the United States, be, and the same is hereby, approved and ratified.
>
> Adopted by the House of Representatives the 22nd day of April, 1911.

In a comparison of the text in the document transmitted to Washington, D. C. with that which is printed in the House journal, the following discrepancies are evident—

1. the word "the" was inserted in front of the word "power" in the proposed amendment
2. the period was replaced by a colon in the proposed amendment
3. the word "that" was capitalized in the State resolve

The text of S. J. R. No. 7 which apparently passed the Arkansas Legislature (although it cannot be determined for certain from the journals) contained the following changes to the official Congressional Joint Resolution—

1. the preamble was discarded
2. the word "The" was deleted

3. the comma following the word "incomes" was deleted
4. the comma following the word "derived" was deleted
5. the word "States" was changed to a common noun

These changes were in violation of the duty which the Arkansas Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his letter of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

The purported ratification of the proposed Sixteenth Amendment by the Legislature of the State of Arkansas was, thus, defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that the following changes were made to the official Congressional Joint Resolution—

a. the preamble was discarded
b. the word "The" was deleted
c. the comma following the word "incomes" was deleted
d. the comma following the word "derived" was deleted
e. the word "States" was changed to a common noun

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878 in that the certificate returned with the copy of S. J. R. No. 7 is in substantial disagreement with the journals of the State

3. Violation of Article V, Section 22 of the Arkansas State Constitution in the failure of the Senate to read S. J. R. No. 7 on three separate days prior to passage

4. Violation of Article XVI, Section 11 of the Arkansas State Constitution in that S. J. R. No. 7 fails to state distinctly the object to which the tax to be imposed under that resolution will be applied.

5. The Governor vetoed S. J. R. No. 7 and the Legislature failed to properly repass the resolution under the State Constitution

Wisconsin—May 26th, 1911

On January 12th, 1911, the Governor of Wisconsin, Francis E. McGovern, addressed the Wisconsin State Legislature. Included in his message was this statement on income taxation—

> The question of the enactment of a law for the taxation of incomes is now before the people of Wisconsin in two forms. The proposed Sixteenth Amendment to the Constitution of the United States relates to this subject. Proposed by Congress some months ago, it has been submitted to the legislatures of the several states to be ratified or rejected by them as provided by the Constitution of the United States.
>
> For years it was supposed that under the Constitution Congress had the power to tax incomes without apportioning the levy according to population. But in 1894 the Supreme Court of the United States held otherwise. The effect of this decision was practically to prohibit the enactment of a federal income tax. To confer this power on Congress, without unreasonable restriction or limitation, this proposed Sixteenth Amendment to the Constitution of the United States is now offered.
>
> * * *
>
> . . . the working man, farmer or small merchant, with a modest home of his own, now pays taxes out of all proportion to those levied upon his prosperous neighbor who lives in rented apartments and invests his earnings in securities and other forms of intangible property.
>
> That the United States should possess the power to tax incomes upon any fair basis Congress may determine, without the necessity of apportionment among the several states according to population, is quite clear. In case of war or other great emergency to deny by a constitutional technicality the exercise of this power by the government would be nothing short of a public calamity.
>
> I therefore respectfully recommend that the proposed Sixteenth Amendment to the Constitution of the United States be approved, and that a state law taxing incomes be enacted.
>
> It is sometimes said that we ought not at the same time favor federal and state taxation of incomes. It does not seem to me that this proposition is either sound or relevant to the present situation. In the first place, the proposed Sixteenth Amendment to the Constitution of the United States may not be adopted. To become valid it must receive the votes of the legislatures of three-fourths of all the states; otherwise it will be rejected. The action of this state relative to it will not be decisive. Again, even though the federal constitution should be amended, as proposed, it does not necessarily follow that Congress will immediately pass a law imposing an income tax. The present condition of the national revenues rather negatives the idea of such action. Finally, there is no necessary incompatibility between a national and a state income tax. Indeed, if it be a just method of

raising revenue, less objectionable than some features of our present plan, there is no good reason why it should not be given the widest application and greatest opportunity for usefulness.

. . . Until we have had such experience, it may be well to proceed with caution in the matter of the immediate abolition or reclassification of the present personal property tax. (SJ at 30)

Governor McGovern's contention that there had been an ongoing assumption that levying incomes taxes without apportionment was permissible was simply untrue. The Governor also suggested that the target of any tax to be imposed under the power to be granted by the ratification of the proposed Sixteenth Amendment would be those who were "prosperous" and who lived "in rented apartments and [invested their] earnings in securities and other forms of intangible property."

The Governor's apparent justification for the Wisconsin Legislature ratifying the proposed Sixteenth Amendment was that it might not be ratified and that Wisconsin's vote wouldn't mean much anyway. Furthermore, the Governor argued, Congress probably wouldn't impose an income tax right away. In the meantime, Governor McGovern wanted to make sure the State property and income tax were retained.

On February 7th, at 11 o'clock in the morning, the following resolution was introduced—

Jt. Res. No. 66, A. By Mr. Gettle. Referred, with the executive message, to the committee on Constitutional Amendments. (AJ at 166)

That very same morning, Jt. Res. No. 66, A. was favorably reported out of committee—

The committee on Constitutional Amendment report and recommend, Jt. Res. No. 66, A.;

Joint Resolution ratifying the sixteenth amendment to the constitution of the United States.

Adoption.

And return

Executive communication relating to the proposed sixteenth amendment to the constitution of the United States. (AJ at 167)

Two days later, without any reading and without the resolution having been printed, J. R. No. 66, A. was taken up for a vote—

Jt. Res. No. 66, A.,

Joint resolution ratifying the sixteenth amendment to the constitution of the United States.

The question was upon the adoption of the resolution.

The ayes and noes being required, it was decided in the affirmative: Ayes, 92; noes, none; absent or not voting, 8.

The vote was as follows:

Ayes- . . . -92.

Noes-None.

Absent or not voting- . . . -8. (AJ at 193)

The Wisconsin State Constitution, in 1911, put very few restraints on the passage of legislation and, therefore, the Legislature was required to do very little in the passage of any legislation. In fact, they were not required to record anything in their journal. The

record in Wisconsin is, thus, incomplete, but not in violation of any Constitutional provision.

On the 14th of February, the Senate received the following message from the House—

> I am directed to inform you that the assembly . . .
> Has adopted, and asks concurrence in,
> . . . Jt. Res. No. 66, A. (SJ at 189)

Though it is not recorded as having been referred to any Senate committee, three months after its introduction, in contrast to the Assembly's one-hour turn-around in committee, on May 11th, J. R. No. 66, A. was reported favorably out of committee—

> The committee on Finance report and recommend:
>
> * * *
>
> . . . Jt. Res. No. 66, A.,
> Concurrence. (SJ at 681)

On the 16th of May, J. R. No. 66, A. was taken up, without record of a first or second reading, or of any printing—

> Jt. Res. No. 66, A.,
> Ratifying the sixteenth amendment to the constitution of the United States.
> Was read a third time.
> The question was, Shall the resolution be concurred in?
> The ayes and noes were required, and the vote was: Ayes, 21; noes, 0; absent or not voting, 12, as follows:
> Ayes- . . . -21.
> Noes-None.
> Absent or not voting- . . . -12.
> And so the resolution was concurred in. (SJ at 712)

Of all the members elected to the Senate, only 63.6% voted in favor of this resolution, however, since the Wisconsin State Constitution is silent as to whether a majority is required of the members elected or merely of those present or voting, there is no literal defect in this vote.

On the 17th, the House received a message from the Senate on its concurrence in J. R. No. 66, A—

> I am directed to inform you that the senate has concurred in
> Jt. Res. No. 66, A., . . . (AJ at 1044)

At the end of May, on the 31st, the Governor notified the Senate that he was going to transmit J. R. No. 66, A. to Washington, D. C.—

> Pursuant to the provisions of Joint Resolution No. 66, A., I have this day transmitted certified copies of said joint resolution No. 66, A., ratifying the sixteenth amendment to the constitution of the United States, to the Honorable Philander C. Knox, secretary of state of the United States, and to the presiding officers of both branches of the national congress, at Washington, D. C.
> Respectfully submitted,
> FRANCIS E. McGOVERN,
> Governor.
> May 26, 1911. (SJ at 828)

The full text of J. R. No. 66, A. was never recorded in the Wisconsin journals, nor was any reading in full ever recorded, nor was any printing of the resolution recorded, nor was any engrossing of the resolution recorded, nor was any signing of the resolution recorded, but, in Wisconsin, it wasn't necessary to record any of those important events.

On May 26th, 1911, Governor McGovern transmitted an unsigned copy of J. R. No. 66, A. to Washington. That copy read as follows—

[Jt. Res. No. 66, A.]

Joint Resolution

Ratifying the sixteenth amendment to the constitution of the United States.

WHEREAS, Both houses of the sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the constitution of the United States of America in the following words, to-wit:

"A joint resolution proposing an amendment to the constitution of the United States.

"**Resolved by the senate and house of representatives of the United States of America in congress assembled** (two-thirds of each house concurring therein), That the following article is proposed as an amendment to the constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution, namely, article XVI. The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states and without regard to any census or enumeration.

Therefore, be it

Resolved by the assembly, the senate concurring, That the said proposed amendment to the Constitution of the United States of America be, and the same hereby is ratified by the legislature of the State of Wisconsin, and be it further,

Resolved, That copies of this joint resolution, certified by the secretary of state, be forwarded by the governor to the secretary of state at Washington and to the presiding officers of each house of the national congress.

Assembly: Ayes, 92; Noes, 0.

Senate: Ayes, 21; Noes, 0.

C. A. Ingram,

SPEAKER OF THE ASSEMBLY.

H. C. Martin,

PRESIDENT OF THE SENATE.

C. E. Shaffer,

CHIEF CLERK OF THE ASSEMBLY.

F. M. Wylie,

CHIEF CLERK OF THE SENATE."

J. R. No. 66, A., as transmitted, contains the following changes from the official Congressional Joint Resolution

1. the preamble was modified—

a. the word "Senate" was changed to a common noun

b. in the phrase "House of Representatives" both capitalized words were changed to common nouns

c. the word "Congress" was changed a common noun

d. both instances of the word "Constitution" were changed to common nouns

e. the word "States" was changed to a common noun

f. the colon following the second instance of the word "Constitution" was changed to a comma

g. the word "namely" and a comma were inserted behind the second instance of the word "Constitution"

h. the designation "Article XVI." was incorporated into the preamble by virtue of the insertion of comma at the end of the preamble in place of the colon

2. the word "Article" was changed to a common noun

3. the designation "Article XVI." was removed from the proposed amendment by virtue of the change of the ending colon in the preamble to a comma

4. the word "Congress" was changed to a common noun

5. the word "States" was changed to a common noun

All such changes were in violation of the duty which the Wisconsin Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted **in precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the bill **in the precise form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

Wisconsin's purported ratification of the proposed Sixteenth Amendment was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that J. R. No. 66, A. contained the following changes to the official Congressional Joint Resolution—

a. the preamble was modified—

i. the word "Senate" was changed to a common noun

ii. in the phrase "House of Representatives" both capitalized words were changed to common nouns

iii. the word "Congress" was changed a common noun

iv. both instances of the word "Constitution" were changed to common nouns

v. the word "States" was changed to a common noun

vi. the colon following the second instance of the word "Constitution" was changed to a comma

vii. the word "namely" and a comma were inserted behind the second instance of the word "Constitution"

viii. the designation "Article XVI." was incorporated into the preamble by virtue of the insertion of comma at the end of the preamble in place of the colon

b. the word "Article" was changed to a common noun

c. the designation "Article XVI." was removed from the proposed amendment by virtue of the change of the ending colon in the preamble to a comma

d. the word "Congress" was changed to a common noun

e. the word "States" was changed to a common noun

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

New York—July 12th, 1911

On January 12th, 1911, a bill for ratification of the proposed Sixteenth Amendment was introduced in the Senate of the Legislature of the State of New York—

> Mr. Wagner introduced a bill (Int. No. 22) entitled "Concurrent resolution of the Senate and Assembly ratifying the proposed amendment to the Constitution of the United States, relating to taxes on incomes," which was read the first time, and by unanimous consent was also read the second time, and referred to the committee on judiciary. (SJ at 14)

Two weeks later, on the 26th, Senate bill No. 22, Int. No. 22 was favorably reported out of committee and—

> On motion of Mr. Wagner, and by unanimous consent, the rules were suspended, and said bill ordered to a third reading. (SJ at 64)

On the 31st of that month, Senate bill No. 22, Int. No. 22 was reported as correctly printed and engrossed. (SJ at 79)

Almost two months later, on March 23rd, Senate bill No. 22, Int. No. 22 was set for consideration as a special order on the 28th. (SJ at 517) On the 28th, consideration of the bill was postponed until April 5th. (SJ at 552) Further consideration of Senate bill No. 22, Int. No. 22 was, according to the journal, not taken up until April 19th, when the following took place—

> The Senate bill (No. 22, Int. No. 22) entitled "Concurrent resolution of the Senate and Assembly ratifying the proposed amendment to the Constitution of the United States, relating to taxes on incomes," having been announced for third reading, Mr. Brackett moved that said bill be recommitted to the committee on judiciary for a hearing.
>
> The President put the question whether the Senate would agree to said motion, and it was decided in the negative, as follows:
>
> FOR THE AFFIRMATIVE.
>
> * * *
>
> 21
>
> FOR THE NEGATIVE.
>
> * * *
>
> 30
>
> Said bill was read the third time.
>
> The President put the question whether the Senate would agree to the final passage of said bill, the same having been printed and upon the desks of the members in its final form for three calendar legislative days, and it was decided in the affirmative, a majority of all the Senators elected voting in favor thereof, and

three-fifths being present, as follows:

FOR THE AFFIRMATIVE.

* * *

35

FOR THE NEGATIVE.

* * *

16

Ordered, That the Clerk deliver said bill to the Assembly and request their concurrence therein. (SJ at 617)

There is no journal record of the President of the Senate signing Senate bill No. 22 in the presence of the Senate.

On April the 20th, Senate bill No. 22 was introduced into the Assembly—

"Concurrent resolution of the Senate and Assembly ratifying the proposed amendments to the Constitution of the United States, relating to taxes on incomes" (No. 22, Rec. No. 109), which was read the first time and referred to the committee on the judiciary. (AJ at 1280)

On June 29th, Senate bill No. 22 was reported favorably out of committee and placed on its second reading. (AJ at 3557)

On July 11th, Senate bill No. 22 was read the second time, passed to its third reading and referred to the committee on revision. (AJ at 3688)

On July 12th, Senate bill No. 22 was taken up for consideration with the following result—

Mr. Speaker announced the special order, being the Senate bill (No. 22, Rec. No. 109), entitled "Concurrent resolution of the Senate and Assembly ratifying the proposed amendments to the Constitution of the United States, relating to taxes on incomes."

Debate was had thereon.

Said bill was then read the third time, having been printed and upon the desks of the members in its final form at least three calendar legislative days prior to its final passage.

Mr. Speaker put the question whether the House would agree to the final passage of said bill, and it was determined in the affirmative, a majority of all the members elected to the Assembly voting in favor thereof, and threefifths being present.

AYES 91

NOES 42

Those who voted in the affirmative were:

* * *

Those who voted in the negative were:

* * *

Ordered, That the Clerk return said bill to the Senate, with a message that the Assembly have concurred in the passage of the same. (AJ at 3725)

The actual count according to a count of the names on the roll call in the journal was 91, Yeas; 41, Noes, however, the actual percentage of Yeas should have been based upon the number of all the members elected to the Assembly (Article III, Section 14 of the New York State Constitution provided for majorities to be calculated upon this basis). In

1913, the number of Assemblyman elected was 150. The percentage vote was, thus, 60.7%, or, less than a two-thirds majority.

That same day, the Assembly returned Senate bill No. 22 to the Senate with a message of concurrence—

> The Assembly returned the Senate bill (No. 22, Int. No. 22), entitled "Concurrent resolution of the Senate and Assembly ratifying the proposed amendments to the Constitution of the United States, relating to taxes on incomes," with a message that they have concurred in the passage of the same.
>
> Ordered, That the Clerk deliver said bill to the Secretary of State. (SJ at 2199)

As in the Senate, there is no journal record of the Speaker of the House signing Senate bill No. 22 in the presence of the House. There is, likewise, no record of the signing of Senate bill No. 22 by the Governor. That fact is duly noted by the Solicitor of the Department of State in Washington, D. C. The reason the Governor never signed Senate bill No. 22 is that it was never presented to him in violation of Article IV, Section 7 of the New York State Constitution which required all bills which had passed both houses to be presented to the Governor. In fact, on January 12th, 1911, the day that Senate bill No. 22 was introduced, Senate Rule 18 was amended to read—

> . . . all resolutions which propose any amendment of the Constitution or **ratify any proposed amendment to the Constitution of the United States** shall be treated, in the form of proceeding on them, in a similar manner with bills, . . . (emphasis added)

The copy of the resolution transmitted to Washington, D. C., is not designated as Senate bill No. 22 and is also unsigned—

> CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY
>
> Ratifying the proposed amendment to the constitution of the United States, relating to taxes on incomes.
>
> Whereas, At the first session of the sixty-first congress it was resolved by the senate and house of representatives of the United States of America in congress assembled (two-thirds of each House concurring therein), that the following article to be proposed as an amendment of the constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of said constitution, namely:
>
> Article 16. The congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.
>
> Therefore, Resolved (if the Assembly concur), That the legislature of the state of New York does hereby ratify the above recited proposed amendment to the constitution of the United States;
>
> And be it further resolved (if the Assembly concur), That the governor be requested to transmit a copy of these resolutions and preamble to the secretary of state of the United States of America.
>
> State of New York.
>
> In Senate, Apr 19 1911.
>
> The foregoing resolution was duly passed, a majority of all the Senators elected voting in favor thereof.
>
> By order of the Senate
>
> T. F. Conway
>
> President.

State of New York,
In Assembly Jul 12 1911.
The foregoing resolution was duly passed, a majority of all the members elected to the Assembly voting in favor thereof.
By order of the Assembly,
Daniel D. Frisbie
Speaker.
(Endorsed)
STATE OF NEW YORK,
Office of the Secretary of State.
I hereby certify that this Resolution was filed in the office of the Secretary of State, on the
13 day of Jul 1911
Luke A. Keenan
Deputy Secretary of State.

A certificate from the office of the Secretary of State of New York accompanied this resolution, however, that certificate was signed by a Second Deputy Secretary of State.

Although it is impossible to tell whether the text of the foregoing resolution is that which was printed for the benefit of the New York legislators, it was inappropriate, in any event, because of the following changes made to the official Congressional Joint Resolution—

1. the preamble was modified
2. the designation "Article XVI." was changed to "Article 16."
3. the word "Congress" was changed to a common noun
4. the comma after the word "incomes" was deleted
5. the word "States" was changed o a common noun

These changes were in violation of the duty which the New York legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the states are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)

> **When the bill has been agreed to in *identical form*** by both bodies—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President. **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments,** either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed amendment to the Supreme Law of the land.

In addition, Senate bill No. 22 violated Article III, Section 22 and Article XVI, Section 2 of the New York State Constitution. Article III, Section 22 provided that—

> Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

Obviously, Senate bill No. 22 did not distinctly state the tax, in that there is no rate given nor any other specific qualifications fixing the tax. As set forth in the document transmitted to Washington, D. C., the resolution required reference to other laws to fix the tax or its object.

Article XVI, Section 2 of the New York State Constitution required that—

> The legislature shall provide for the supervision, review and equalization of assessments for purposes of taxation.

The passage of Senate bill No. 22 by the New York Legislature violated this provision because, in so doing, control over the "supervision, review and equalization of assessments for purposes of taxation" was relinquished by the Legislature, a duty which was solely that body's in its own tax legislation by virtue of this Constitutional provision.

The purported ratification of the proposed Sixteenth Amendment by the Legislature of the State of New York was, thus, defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that Senate bill No. 22 contained the following changes to the official Congressional Joint Resolution—
   a. the preamble was modified
   b. the designation "Article XVI." was changed to "Article 16."
   c. the word "Congress" was changed to a common noun
   d. the comma after the word "incomes" was deleted
   e. the word "States" was changed to a common noun
2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878
3. Violation of Article IV, Section 7 of the New York State Constitution in that Senate bill No. 22 was not presented to the Governor for his approval.
4. Violation of Article III, Section 22 of the New York State Constitution in that Senate bill No. 22 did not distinctly state the tax to be imposed upon the people of New

York and required the reference to another law to fix the tax and its object.

5. Violation of Article XVI, Section 2 of the New York State Constitution in that the Legislature relinquished control over any tax to be imposed as a result of the passage of Senate bill No. 22

6. Failure of the Assembly to pass Senate bill No. 22 by a two-thirds majority

South Dakota—February 3rd, 1912

Upon a thorough search of the archives at Washington, D. C., no record can be found of an acknowledgement letter from the Executive offices of the State of South Dakota, nor is there any apparent record of the transmission of the Congressional Joint Resolution to the South Dakota Legislature. In the Senate of South Dakota on January 7th, 1911, the following introduction was, therefore, had without jurisdiction of the certified copy of United States Senate Joint Resolution No. 40—

> Mr. Hitchcock introducd (sic)
> Senate Joint Resolution No. 5.
> A Joint Resolution of the Legislature of the State of South Dakota Ratifying and Approving the Proposed Amendment known as the Sixteenth Amendment to the Constitution of the United States Relating to Income Tax.
> Which was read the first time.
> And
> Referred to the Committee on Federal Relations. (SJ at 96)

There is no indication from the journal that S. J. R. No. 5 was read at length as required by the South Dakota Constitution, Article III, Section 17. On the 16th of that month, the Committee on Federal Relations submitted its report which recommended that Senate Joint Resolution No. 5 pass. (SJ at 152) Later that day, the resolution was read a second time (SJ at 154) and, the next day, it was read a third time, but not at length, per the Constitutional requirement. (SJ at 163) S. J. R. No. 5 was then immediately brought up for a vote and with the following result—

> There were yeas, 41.
> Excused, 4.
> (Roll call printed)
> The President declared the Joint Resolution passed. (SJ at 163)

Senate Joint Resolution No. 5 was read in the House shortly thereafter—

> A Joint Resolution of the Legislature of the State of South Dakota Ratifying and Approving the Proposed Amendment known as the Sixteenth Amendment to the Constitution of the United States Relating to Income Tax.
> Was read the first time. (HJ at 198)

Apparently, there was some confusion here because the journal shows that the resolution was not received by the House until after the first reading which was evidently, also not at length.

I have the honor to transmit herewith . . .
Senate Joint Resolution No. 5.
A Joint Resolution of the Legislature of the State of South Dakota Ratifying and Approving the Proposed Amendment known as the Sixteenth Amendment to the Constitution of the United States Relating to Income Tax.

* * *

Which (has) passed the Senate and your favorable consideration is respectfully requested. (HJ at 205)

The following day, S. J. R. No. 5 was referred to the Committee on Federal Relations. (HJ at 213) At the end of January, on the 31st, S. J. R. No. 5 was favorably reported out of committee. (HJ at 306)

On the 1st of February, S. J. R. No. 5 was read the third time. The second reading is not recorded on the journal. Immediately thereafter, a vote was taken on S. J. R. No. 5 and—

There were yeas, 100.
Absent and not voting 3.
Excused, 1. (HJ at 347)

The Speaker of the House then declared that the Joint Resolution had passed. (HJ at 348) On the 3rd, the Speaker fulfilled the constitutional requirements on signing bills, publicly reading the resolution's title and then signing the resolution in the presence of the House. (HJ at 372) The final step taken was the delivery of S. J. R. No. 5 to the Secretary of State for his approval. (HJ at 382) It does not appear from the record, however, whether the Governor was presented with S. J. R. No. 5 in accord with Article IV, Section 10 of the State Constitution. The unsigned copy in Washington does not show the Governor's name.

Having received a message from the House that they had passed S. J. R. No. 5 on February 2nd (SJ at 325), the Senate had the two versions "carefully compared" and found that they were precisely what had been enrolled through the purposeful acts of both houses. (SJ at 332) Then, the President of the Senate delivered S. J. R. No. 5 "to the Secretary of State for his approval . . ." (SJ at 337)

It is apparent from the foregoing that the Legislature of the State of South Dakota wished to have S. J. R. No. 5 very carefully and purposefully checked by the Secretary of State of South Dakota. Therefore, the changes in wording, punctuation and capitalization which they included in their version of the Sixteenth Amendment must be taken to have been done deliberately and not mistakenly.

S. J. R. No. 5 as transmitted by the Secretary of State of South Dakota to the Secretary of State of the United States read as follows—

A Joint Resolution of the Legislature of the State of South Dakota, ratifying and approving the proposed Amendment known as the Sixteenth Amendment to the Constitution of the United States relative to Income Tax.
Be It Resolved by the Senate of the State of South Dakota, the House of Representatives concurring therein;
Whereas,The Sixty First Congress of the United States of America at the First Session begun and held in the city of Washington on Monday the Fifteenth Day of March, 1909, proposed an Amendment to the Constitution of the United States,in words and figures as follows Article XVI: Congress shall have power to

lay and collect taxes on Incomes from whatever Source derived without Apportionment among the several States and without regard to any Census or Enumeration.

Now, Therefore, Be It Resolved by the Legislature of the State of South Dakota: That the foregoing resolution being the Sixteenth Amendment to the Constitution of the United States be, and the same is hereby adopted, approved and ratified.

.....

A Joint Resolution of the Legislature of the State of South Dakota Ratifying and approving theproposed (sic) Amendment known as the Sixteenth Amendment to the Constitution of the United States,

Relative to Income Tax.

In addition to the complete absence of the official preamble, the colon inserted after the designation "Article XVI" causes that designation to be incorporated into the South Dakota Legislature's preamble. The initial "The" in the official version was, in South Dakota's version, discarded. The commas before and after the phrase "from whatever Source derived" were ignored, as was the comma which should have followed the word "States". In addition, the words "incomes", "source", "apportionment", "census" and "enumeration" are all capitalized, proper nouns as opposed to the Congressionally-approved common nouns. These deliberate and thoughtful changes made by the Legislature of South Dakota were all violations of the duty which the Legislature of South Dakota had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, with the **spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form*** by both bodies—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion,

> substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must concur exactly and precisely with Congress in a proposed Constitutional amendment.

In addition to approving their own incomplete version of Congress' version, a copy of S. J. R. No. 5 was sent to Washington, D. C., on February 19th, 1912, over a year after its recorded approval in the South Dakota Legislature. This document was not signed and the certificate and letter accompanying the document each bear a different signature represented as that of Samuel C. Polley, Secretary of State of South Dakota.

The Legislature of South Dakota negated their ratification because of the following defects—

1. Lack of jurisdiction of the Congressional Joint Resolution in the South Dakota Legislature

2. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. R. No. 5 contained the following changes from the official Congressional Joint Resolution—

a. the complete absence of the official preamble

b. the initial "The" was deleted

c. the commas before and after the phrase "from whatever Source derived" were deleted

d. the comma which should have followed the word "States" was deleted

e. the words "incomes", "source", "apportionment", "census" and "enumeration" were all capitalized

f. the designation "Article XVI", by virtue of the placement of the colon after it, was incorporated into the preamble of S. J. R. No. 5

3. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

4. Presentation of S. J. R. No. 5 to the Secretary of State for his approval instead of to the Governor in violation of Article IV, Section 10 of the South Dakota State Constitution

Arizona—April 9th, 1912

Article IV, Part 2, Section 12 of the Constitution of the State of Arizona of 1910 provided that—

> Every bill shall be read by sections on three different days, unless in case of emergency, two-thirds of either House deem it expedient to dispense with this rule; but the reading of a bill by sections on its final passage shall in no case be dispensed with, and the vote on the final passage of any bill or joint resolution shall be taken by ayes and nays on roll call. Every measure when finally passed shall be presented to the Governor for his approval or disapproval.

Section 25 of the same Article gave only one example of an "emergency" and that was "periods of emergency resulting from disaster cause by enemy attack." Section 15 of the same Article required that—

> A majority of all members elected to each House shall be necessary to pass any bill, and all bills so passed shall be signed by the presiding officer of each House in open session.

In the Journal of the Arizona Senate of April 3rd, 1912, a day on which there is no recorded enemy attack upon the State of Arizona, nor of any other "disaster," the following entry appears without any previous reference in that journal to the named Senate Joint Resolution—

> Senate Joint Resolution No. 1 was read third time by Sections and upon roll call was passed by unanimous vote.

The Senate, not recognizing an existing emergency situation, had not dispensed with the provisions of Section 12. There was no required first reading, no required second reading, no setting forth of the roll call, nor was there any required signing of S. J. R. No. 1 in open session by the President of the Senate.

Document No. 240 of the United States Senate, 71st Congress (See Appendix), in agreement with the Arizona Journal, notes that there is "no record vote," and, unlike the vote in the Arizona House which is listed on Document No. 240 with the number of Yeas and Nays, the vote in the Arizona Senate in Senate Document No. 240 is listed merely as "Passed."

On March 19th of 1912, the following resolution was introduced in the Arizona House of Representatives by Rep. W. M. Whipple—

> JOINT RESOLUTION (HOUSE RESOLUTION)
> Of the Legislature of the State of Arizona, Ratifying and Approving the proposed amendment to the Constitution of the United States, relative to an

Income Tax.

WHEREAS, the Sixty-first Congress of the United States of America, at the First Session thereof, begun and held at the City of Washington, on Monday, the 15th day of March, 1909, proposed an amendment to the Constitution of the United States in words and figures as follows:

"ARTICLE XVI. Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States and without regard to any census or enumeration."

Now therefore, be it

RESOLVED, by the Legislature of the State of Arizona, That the foregoing resolution, being the Sixteenth Amendment to the Constitution of the United States, be, and the same is hereby, approved and ratified.

2. That the Governor of this State be and he is hereby requested to forward to the Secretary of State at Washington, District of Columbia, and to our Senators and Representative in Congress, individual transcripts of this resolution duly authenticated and attested with the Seal of the State of Arizona. (HJ at 11)

There was an immediate attempt to adopt H. J. R. No. 1 and report it to the Senate (HJ at 11). That attempt, however, was stopped by a successful motion to reconsider such a course. (HJ at 11).

On the following day, the previous day's reading of H. J. R. No. 1 was noted and the resolution was referred to the Judiciary Committee. (HJ 18)

Later on the same day, the House had the second reading of H. J. R. No. 1. At that time, the House had not, like the Senate, recognized any "emergency" and, thus, had also not dispensed with the Constitutional provisions for the reading of bills and resolutions. H. J. R. No. 1 was then referred to the Committee on Printing. (HJ at 22)

On the 29th of March, with no intervening record in the journal, the following took place—

Your Committee on Enrolling and Engrossing begs leave to report that it has considered House Joint Resolution No. 1, by Mr. Whipple and respectfully recommend that it be placed on its 3rd reading as Enrolled and Engrossed and do pass.

W. M. WHIPPLE,
Chairman. (HJ at 46)

On the same day, Chairman Whipple's report was read as set forth above and, then, H. J. R. No. 1 was taken up for consideration in the following manner—

Moved and seconded that House Joint Resolution No. 1, be placed on its third reading and final passage. Carried.

The vote on the roll call was then fully recorded. The roll call showed a vote of 33 in the affirmative, none in the negative and two excused. (HJ at 68) It is not recorded whether H. J. R. No. 1 was subsequently signed by the Speaker of the House in open session.

The status of H. J. R. No. 1 became moot when S. J. R. No. 1 was submitted into the House on the 4th of April, but it was not submitted by virtue of a Senate communication. It was introduced with a inappropriate first reading—

Under First reading of Bills the following were submitted:

Senate Joint Resolution No. 1, by Mr. C. B. Wood, Ratifying the Sixteenth Amendment of the Constitution of the United States.

First reading of the Bill by title. (HJ at 116)

This first reading of S. J. R. No. 1 in the House, not under a declared emergency, was constitutionally insufficient because it was read only by title. Further, it is not certain whether that was the correct title because the title of S. J. R. No. 1 was never recorded in the Senate journal.

Later, the same day, the House declared an emergency.

> Moved and Seconded that an emergency exists and that the reading of Senate Joint Resolution No. 1, Senate Bill No. 5, Senate Bill No. 10, and Senate Bill No. 30, first reading, by number and title only was authorized by a two-thirds vote of all the members elected to the House, declaring that an emergency exists and that it was expedient that Section 12, Article IV, of the Constitution relating to the reading of **Bills** by sections on first reading be dispensed with. Carried. (HJ at 117) (emphasis added)

Subsequent to the foregoing action of the 4th of April, S. J. R. No. 1 officially arrived in the House later that day—

> The following communications were received from the Senate:
> "Mr. Speaker: I am directed by the Senate to inform the House that it has passed Senate Joint Resolution No. 1.
> "J. M.. McCOLLUM,
> Secretary of Senate." (HJ at 117)
> "To the Speaker of the House of Representatives.
> "Sir: I have the honor to inform you that the Senate today passed the **accompanying** Senate Joint Resolution No. 1.
> "Respectfully,
> "M. G. CUNNIFF,
> "President of Senate." (HJ at 118)
> (emphasis added)

The second reading of S. J. R. No. 1, which was the first after the official communication from the Senate, was then had—

> Senate Joint Resolution No. 1, by Mr. C. B. Wood, Ratifying the Sixteenth Amendment of the Constitution of the United States.
> Second reading of the Bill by title and referred to the Judiciary Committee. (HJ at 120)

Finally, on that same day, S. J. R. No. 1 was—

> . . . read third time by sections and the roll call, postponed until Monday April 8, 1912. (HJ at 131)

When the roll call vote on S. J. R. No. 1 was taken, the resolution was again—

> . . . read third time in full, placed on final passage, and passed by the following vote . . .

33 in the affirmative, 1 absent and 1 excused. The House roll call vote was duly recorded in the Journal. S. J. R. No. 1 was then signed by the Speaker of the House and conveyed to the Senate. (HJ at 134)

Under the provisions of the last clause of S. J. R. No. 1, as well as the Congressional Concurrent Resolution, certified copies of S. J. R. No. 1 were to be sent to the Secretary

of State of the United States. An unsigned copy of S. J. R. No. 1 was transmitted to the Secretary of State along with a signed certificate from the Secretary of State of Arizona. The copy of S. J. R. No. 1 sent to Washington, D. C. read as follows—

S. J. R. I.

A JOINT RESOLUTION

Of the Legislature of the State of Arizona ratifying the Sixteenth Amendment to the Constitution of the United States.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ARIZONA:

Whereas, both Houses of the Sixty-first Congress of the United States of America at its first session, begun and held at the City of Washington on Monday, the fifteenth day of March, one thousand nine hundred and nine, by a Constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to wit:

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (twothirds of each House concurring therein), That the following article is proposed as amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

ARTICLE XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE LEGISLATURE OF THE STATE OF ARIZONA:

That the said proposed amendment to the Constitution of the United States be, and the same is hereby approved and ratified by the Legislature of the State of Arizona;

AND, FURTHER BE IT RESOLVED, That certified copies of this joint resolution be forwarded by the Governor of this State to the Secretary of State of the United States of America at Washington, to the President of the United States Senate, and to the Speaker of the House of Representatives of the National Congress.

April 3, 1912.
M. G. Cunniff
President of the Senate.
Sam B. Bradner
Speaker of the House of Representatives.
Approved April 9, 1912.
Geo. W. P. Hunt
Governor of Arizona.

In this version of S. J. R. No. 1, it might appear that the Arizona Legislature made virtually no changes to either the preamble or the proposed amendment proper, but the Solicitor of the Department of State made the comment, apparently because the copy of S. J. R. No. 1 received by the Department of State is unclear, that he wasn't sure whether April the 9th was the date that S. J. R. No. 1 was "passed by legislature" or the date "signed by Governor." April 3rd, 1912 is the date indicated on the copy at the Depart-

ment of State as the date on which the President of the Senate and the Speaker of the House of the Arizona legislature signed S. J. R. No. 1. It can easily be seen by the House journal that April 4th, 1912 is the correct date of the signing of S. J. R. No. 1 by the Speaker. In fact, April 4th is the date on which S. J. R. No. 1 was first read in the House and then was received belatedly from the Senate. No wonder the House members declared an emergency. Only having received S. J. R. No. 1 from the Senate on the 4th, they were supposed to have already passed S. J. R. No. 1 on the 3rd, since the Speaker's signing of S. J. R. No. 1 is indicated for that day. There is no record in the Senate journal of the signing of S. J. R. No. 1 by the President of the Senate, although the Governor is recorded on the above document as having signed S. J. R. No. 1 on April 9th. In the *SESSION LAWS OF ARIZONA FIRST AND SPECIAL SESSION. 1912.* S. J. R. No. 1 is recorded as having been approved into law on April 8th.

Perhaps the real problem lies in the multitude of changes which were made between S. J. R. No. 1 as passed by the Legislature and the version sent to Washington, which showed the following changes from the former version—

1. the comma after the first instance of the word "Arizona" was deleted
2. the word "Ratifying" was changed to the word "ratifying"
3. the phrase "and approving" was deleted
4. the word "proposed" was changed to the word "Sixteenth"
5. the word "amendment" was capitalized
6. the comma following the first instance of the word "States" was changed to a period
7. the phrase "relative to an Income Tax" was deleted
8. the enacting clause "BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ARIZONA": was added following the title
9. the word "WHEREAS" was changed to "Whereas"
10. the phrase "both Houses of" was inserted after the word "Whereas"
11. the comma following the first instance of the word "America" was deleted
12. the phrase "at the First Session thereof" was changed to "at its first session"
13. the comma following the word "Washington" was deleted
14. the phrase "the 15th day of March, 1909" was changed to "the fifteenth day of March, one thousand nine hundred and nine"
15. the phrase "proposed an amendment to the Constitution of the United States in words and figures as follows": was changed to "by a Constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to wit:

"JOINT RESOLUTION

"Proposing an amendment to the Constitution of the United States.

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (twothirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution":

16. the word "the" in the proposed amendment was deleted
17. the comma following the word "incomes" was restored
18. the comma following the word "derived" was restored
19. the comma following the word "States" was restored

20. the phrase "Now therefore, be it" was deleted

21. the paragraph "RESOLVED, by the Legislature of the State of Arizona, That the foregoing resolution, being the Sixteenth Amendment to the Constitution of the United States, be, and the same is hereby, approved and ratified." was replaced by "THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE LEGISLATURE OF THE STATE OF ARIZONA: That the said proposed amendment to the Constitution of the United States be, and the same is hereby approved and ratified by the Legislature of the State of Arizona";

22. the paragraph "2. That the Governor of this State be and he is hereby requested to forward to the Secretary of State at Washington, District of Columbia, and to our Senators and Representative in Congress, individual transcripts of this resolution duly authenticated and attested with the Seal of the State of Arizona." was replaced with "AND, FURTHER BE IT RESOLVED, That certified copies of this joint resolution be forwarded by the Governor of this State to the Secretary of State of the United States of America at Washington, to the President of the United States Senate, and to the Speaker of the House of Representatives of the National Congress."

The reality of this situation is that there is absolutely no way that this latter version of S. J. R. No. 1 ever passed the Legislature of the State of Arizona. What was apparently done here is that someone decided to send the original Congressional Joint Resolution to Knox in place of the version which actually passed the Legislature. Had they actually passed what was sent, the Arizona State Legislature certainly would have earned the comment in the Solicitor's memorandum of February 15th, 1913 which says that Arizona committed "No errors." The comment that they did earn was very far from that.

The State of Arizona apparently cannot verify whether or not S. J. R. No. 1 was correctly certified because it has no supporting documents. The originals cannot be located. The copy of S. J. R. No. 1 is false on its face, as is amply proven by the journals.

The version of S. J. R. No. 1 actually passed by the Arizona State Legislature contains the following changes to the official Congressional Joint Resolution—

1. the preamble has been discarded in favor of one composed by the Arizona legislators
2. the word "The" was deleted
3. the word "the" was inserted before the word "power"
4. all commas were deleted

This version of S. J. R. No. 1 was in violation of the duty which the Arizona Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F.

Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
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> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed amendment to the Supreme Law of the land.

Constitutionally, S. J. R. No. 1 is further defective because, as a law of the State of Arizona, it must have conformed to Article IX, Section 9 of the Arizona State Constitution which provides that—

> Every law which imposes, continues, or revives a tax shall distinctly state the tax and the objects for which it shall be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

Obviously, the rate of tax is not distinctly stated in S. J. R. No. 1 and it is, thus, impossible to avoid having to refer to another law to fix the tax under S. J. R. No. 1.

The purported ratification of the proposed Sixteenth Amendment by the Legislature of the State of Arizona was deficient for the following reasons—

1. Falsification of the certified copy of the ratification action
2. Failure by the Senate to read S. J. R. No. 1 either the first time, or the second time, by sections as required by Article IV, Part 2, Section 12 of the Constitution of the State of Arizona
3. Failure by the presiding officer of the Senate to sign S. J. R. No. 1 in open session as required by Article IV, Part 2, Section 15 of the Constitution of the State of Arizona
4. Failure of S. J. R. No. 1 to meet the criteria of Article IX, Section 9 of the Constitution of the State of Arizona requiring any law imposing a tax in Arizona to have the tax fixed such that there is no need to reference any other law
5. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. R. No. 1 as actually passed contained the following changes—

a. the official preamble was discarded
b. the word "The" was deleted
c. the word "the" was inserted before the word "power"
d. all commas were deleted

6. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

Furthermore, it was under highly questionable circumstances that the Arizona House declared an "emergency" in order to suspend legislative provisions of the Arizona State Constitution.

Minnesota—June 11th, 1912

The Minnesota State Legislature was late in starting the ratification process. One Senate joint resolution was introduced in February, 1911, but was rejected in committee. (SJ at 260)

Over a year later, on June 6th, 1912, another joint resolution was introduced in the House, House File No. 12—

> Committee on General Legislation introduced—
> H. F. No. 12, A joint resolution ratifying a proposed amendment to the Consitution of the United states to be known as Article XVI thereof.
> Which was read the first time.
> Mr. Mattson moved that the rules be suspended and that—
> H. F. No. 12, A joint resolution ratifying a proposed amendment to the Constitution of the United States to be known as Article XVI thereof.
> Be read the second and third times and placed upon its final passage.
> Which motion prevailed.
> H. F. No. 12
> Was read the second time.
> H. F. No. 12, A joint resolution ratifying a proposed amendment to the Constitution of the United States to be known as Article XVI thereof.
> Was read the third time and put upon its final passage.
> The question being taken on the passage of the bill.
> And the roll being called, there were yeas 89 and nays 0, as follows . . .
> So the bill passed and its title was agreed to. (HJ at 23)

Neither the House rules nor the Senate rules of the Minnesota Legislature nor the Minnesota State Constitution allowed the the suspension of rules without a two-thirds majority approving. (see example in HJ at 112 and below, SJ at 52) It cannot be positively stated from the information given in the journal whether the necessary two-thirds majority voted to suspend the rules. In the two examples given, the roll call was printed in the journals as required by Article IV, Section 5 of the Minnesota State Constitution which provided that—

> . . . the yeas and nays, when taken on any question, shall be entered on [the] journals.

If the necessary two-thirds majority did not vote for a suspension of the rules then Article IV, Section 20 of the State Constitution was violated. That section provided that—

> Every bill shall be read on three different days in each separate house, unless, in case of urgency, two-thirds of the house where such bill is pending shall deem

it expedient to dispense with this rule; and no bill shall be passed by either house until it shall have been previously read twice at length.

Even if a two-thirds majority did vote for a suspension of the Constitutional requirement of readings on three several days, it was certainly not a case of urgency as required by this provision. The result of these violations was that the requirement of the readings on three several days was not met in the House, all three readings coming on one day. In addition, there was no printing of H. F. No. 12.

In a further violation of Section 20, H. F. No. 12 was never read at length even once.

Meanwhile, in the Senate, several joint resolutions were introduced on the same subject. On June 4th, 1912, S. F. No. 2 was introduced—

> S. F. No. 2, A joint resolution relating to a Federal Income tax.
> Which was read the first time and referred to the Committee on Elections." (SJ at 8)

On June 5th, S. F. No. 8 was introduced—

> S. F. No. 8, A bill for an act to ratify the proposed sixteenth amendment to the Constitution of the United States Relative to laying and collecting a tax on income.
> Which was read the first time and referred to the Committee on Receiving Bills. (SJ at 29)

On the 8th, S. F. No. 2 was shifted over to the same committee which was considering S. F. No. 8—

> Mr. Sullivan, G. H., moved that S. F. No. 2 be called from the Committee on Elections.
> Which motion prevailed.
> S. F. No. 2 was referred to the Committee on Reception of Bills. (SJ at 39)

Later that day, the Senate received a message from the House announcing the passage by the House of the following House resolution—

> H. F. No. 12, A joint resolution ratifying a proposed amendment to the Constitution of the United States to be known as Article XVI thereof.
> H. F. No. 13, Concurrent resolution relating to the ratification of proposed amendments to the Constitution of the United States.

Both House resolutions were properly read for the first time and referred to committee. (SJ at 40) On June 11th, H. F. No. 12 was reported out of committee with a recommendation only of consideration, not of passage.

> H. F. No. 12, A joint resolution ratifying a proposed amendment to the Constitution of the United States to be known as "Article XVI thereof."
> Reports the same back with the recommendation that said joint resolution be received and considered by the Senate.
> Adopted.

Senate Rule 39 provided that all bills of a general nature were to be printed, however, no printing was to be done until after a bill was reported upon **favorably** by committee. H. F. No. 12 was neither reported upon favorably, nor printed, which should have effectively prevented that resolution from being considered. That problem, however, did not have any apparent effect on the Senators from Minnesota.

Mr. Fosseen moved that the rules be suspended and that—
H. F. No. 12, A joint resolution ratifying a proposed amendment to the Constitution of the United States to be known as "Article XVI thereof."
Be read the second and third times and placed upon its final passage.
Mr. Works moved to lay the report of the Committee on the table.
Which motion was lost.
Mr. Sullivan, G. H., moved a call of the Senate.
The roll being called, the following Senators answered to their names . . .

* * *

The question being taken on the motion to suspend the rules. And the roll being called, there were yeas 48 and nays 6 . . .
So the motion prevailed.
H. F. No. 12
Was read the second time.
H. F. No. 12, A joint resolution ratifying a proposed amendment to the Constitution of the United States to be known as "Article XVI thereof."
The question being taken on the passage of the bill,
And the roll being called, there were yeas 49 and nays 5 . . .
So the bill passed and its title was agreed to. (SJ at 52)

The Senate, like the House, failed of having a case of urgency, although the Senate did record its vote on the suspension of the rules. Nevertheless, Article IV, Section 20 of the State Constitution was violated in the Senate by virtue of the preceding and by its failure to read H. F. No. 12 at length twice prior to the vote on final passage.

The other Senate resolutions thought to be moot at this point by the committee to which they had been referred were "indefinitely postponed." H. F. No. 12 having been passed unconstitutionally by both houses, the ratification of the proposed Sixteenth Amendment in Minnesota by H. F. No. 12 became ineffective. (SJ at 53)

On June 12th, H. F. No. 12 was returned to the House, (SJ at 61) and on the 14th, the Governor, Adolph O. Eberhart, proclaimed that he had "approved, signed and deposited in the office of the Secretary of State" H. F. No. 12 along with several other resolutions.

Washington, D. C., however, did not have notice of this legislation. According to the Solicitor of the Department of State in his memorandum to Philander Knox, Secretary of State of the United States (who had asked the Solicitor for his opinion of the status of the various state ratifications), stated that relative to the State of Minnesota the resolution was—

> Signed by Governor. Secretary of Governor merely informs Department and no resolution of legislature enclosed.

The Solicitor's basis for saying that the Minnesota resolution was "(s)igned by Governor" was a letter from the Secretary of State which said—

> I beg to advise you that the Legislature of the State of Minnesota, by a Joint Resolution, adopted by the House of Representatives, in extra session, on June 6th, 1912, by the Senate, in extra session, on June 11th, 1912, approved by the Governor on June 12th, 1912, and filed in this department on June 13th, 1912, has duly ratified that proposed amendment to the Constitution of the United States, to be known as Article XVI thereof.

In the publication *General Laws of Minnesota,* Passed and Approved During the Special Session of the Legislature Commencing June Fourth, 1912, the following is listed—

JOINT RESOLUTION NO. 2—H. F. No. 12.

A Joint Resolution ratifying a proposed amendment to the Constitution of the United States to be known as Article XVI thereof.

WHEREAS, The House of Representatives of the United States and the Senate of the United States, constituting the Congress of the United States, did propose an amendment to the Constitution of the United States by a resolution known as Senate Joint Resolution Forty, and after its passage deposited in the department of state July 31, 1909, which resolution is in words and figures as follows:

"**Resolved,** By the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each house concurring therein), that the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as part of the Constitution:

" 'Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.' "

Now, Therefore, Be it Resolved, By the Legislature of the State of Minnesota: That the said amendment be and the same is hereby ratified.

Approved June 12, 1912. (at 57)

This resolution is nowhere to be found in the Minnesota legislative journals except by title.

The Solicitor also said—

Minnesota, it is to be remembered, did not transmit to the Department a copy of the resolution passed by the legislature of that state.

That Washington, D. C. has no certified copy of the Minnesota ratification resolution may be because there is no archival original copy of that resolution in the State of Minnesota either.

In the case of the State of Wyoming, the failure to send a certified copy of the action of the State Legislature prompted Philander Knox to send a telegram to the Governor of Wyoming asking the Governor to supply Knox with a—

. . . **certified copy** of Wyoming's ratification of Income Tax Amendment so there may be no question as to compliance with Section 205 of Revised Statutes. (emphasis added)

Section 205 of the Revised Statutes of 1878 of the United States read as follows—

Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purpof that resolution, Knox sent a letter to Jordan which stated that "a certified copy of the Resolution under the seal of the State . . . is ***necessary*** **in order to carry out the provisions of Section 205 of the Revised Statutes of the United States."**

In relation to Minnesota, it is clear why Section 205 required a certified copy of the actual resolution as signed by the officials of the Legislature and the Governor, if the resolution was either a bill or a joint resolution or if intended by the Legislature to be signed by the Governor. When a particular State sent such proof to the Secretary of State there could be no question of that State's having validly ratified. Any other kind of "official notice" was open to doubt. In the case of Minnesota, the documentary proof that their duly ratified **and signed** resolution truly exists seems to be missing, in Washington, D. C. and in Minnesota.

Considering this copy of H. F. No. 12, the following changes from the official Congressional Joint Resolution are evident in the text—

1. the preamble was changed
2. the word "States" was changed to a common noun

Any such change constitutes a violation of the duty which the Minnesota Legislature had to concur only in the exact wording as proposed in United States Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and **all punctuation must be in accord with the action taken**. (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed amendment to the Supreme Law of the land.

The Legislature of Minnesota committed the following violations in their purported

ratification of the proposed Sixteenth Amendment—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that H. F. No. 12 contained the following changes to the official Congressional Joint Resolution—

a. the preamble was changed

b. the word "States" was changed to a common noun

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

3. Violations of the Minnesota State Constitution—

a. H. F. No. 12 was not read on three several days in either house in violation of Article IV, Section 20

b. H. F. No. 12 was not read twice at length in either house in violation of Article IV, Section 20

Louisiana—July 1st, 1912

On May 16th, 1912, a resolution to ratify the proposed Sixteenth Amendment was introduced into the Louisiana State Legislature—

> House Concurrent Resolution No. 8—
> By Mr. Johnson:
> Ratifying the Sixteenth Amendment to the Constitution of the United States.
> Whereas, The Congress of the United States on the __ day of July, 1909, adopted a joint resolution proposing an amendment to the Constitution of the United States as follows:
> Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of each House concurring therein, that the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:
> Article XVI. The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.
> And the foregoing amendment having been laid before the General Assembly of the State of Louisiana for consideration and action; now, therefore, be it
> Resolved by the General Assembly of the State of Louisiana, That the foregoing amendment to the Constitution of the United States, be and the same is hereby ratified to all intents and purposes, as a part of the Constitution of the United States.
> (2) That the Governor of the State of Louisiana, is hereby requested to forward to the President of the United States and to the Secretary of State of the United States an authentic copy of the foregoing joint resolution.
> Lies over under the rules. (HJ at 43)

There is no indication in the journals whether or not the Governor of Louisiana transmitted a certified copy of the Congressional Joint Resolution to the Louisiana Legislature. An acknowledgement letter, dated July 31st, 1909, was sent to Philander Knox, the Secretary of State of the United States, by the Governor's private secretary, however, there was no indication of whether the Governor was going to transmit the copy he received to the Legislature. If the Legislature did, in fact, receive a copy of the Congressional Joint Resolution, the Louisiana legislators apparently were unable to correctly decipher any date of passage of the Congressional Joint Resolution on the copy of the resolution—the date on H. C. R. No. 8 is misrepresented as "the __ day of July, 1909" on all versions of H. C. R. No. 8 whether in the journals, the archival copies or the published laws.

Furthermore, every version of H. C. R. No. 8 contains errors of punctuation in both the preamble of the Congressional Joint Resolution (comma added after "assembled"; parentheses removed from around the phrase "two-thirds of each House concurring therein") and in the wording of the proposed amendment (comma removed after the word "incomes") in violation of the duty of the Louisiana Legislature to concur only in the exact wording as proposed in Congressional Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. The standard of compliance with which the States are held is illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives in which the exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form*** by both bodies—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely*** the effect of all amendments, either by of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must concur exactly and precisely with Congress in a proposed Constitutional amendment.

On May 20th, H. C. R. No. 8 was referred to the Committee on Federal Relations. (HJ at 61) On the 29th of that month, H. C. R. No. 8 was favorably reported out of committee, (HJ at 157) and on the next day, it was taken up for a vote—

> Mr. Johnson moved that the resolution be adopted.
> The yeas and nays were called for.
> The yeas and nays were ordered.
> The roll being called on the adoption of the resolution, resulted as follows:
> YEAS.
> * * *
> Total-101.
> NAYS.
> * * *

Total-6.
ABSENT.
* * *
Total-9.

And the resolution was adopted.

Mr. Johnson moved to reconsider the vote by which the resolution was adopted, and, on his own motion, the motion to reconsider was laid on the table. (HJ at 177)

Two days after the vote in the House on H. C. R. No. 8, it was transmitted to the Senate. (SJ at 147) On June 3rd, H. C. R. No. 8 had its first reading and was referred to the Committee on Federal Relations. (SJ at 172) On June 13th, H. C. R. No. 8 was favorably reported. (SJ at 259) The next day, H. C. R. No. 8 was read the second time and was passed to a third reading. (SJ at 291)

On the 18th of June, H. C. R. No. 8 was taken up for consideration on its third reading and on a successful motion it was recommitted to the Committee on Federal Relations. (SJ at 325) H. C. R. No. 8 was reported out of committee favorably again on the 26th of June. (SJ at 451) The next day, when H. C. R. No. 8 came up again for a vote, an attempt was made to substitute a joint resolution for a State income tax for H. C. R. No. 8, which failed. Then, an attempt was made to indefinitely postpone consideration of H. C. R. No. 8, which also failed, and the resolution was passed to a third reading, (SJ at 539) which took place on June 28th—

The Concurrent Resolution was read in full.

Mr. Leon R. Smith moved the final passage of the concurrent resolution.

The roll was called with the following result:

YEAS.
* * *
Total-30.
NAYS.
* * *
Total-8.
ABSENT.
* * *
Total-3.

Mr. Parkerson changed his vote from "no" to "yes" with a view of making a motion to reconsider the vote by which the concurrent resolution was concurred in.

And the Concurrent Resolution was concurred in.

Mr. Leon R. Smith moved to reconsider the vote by which the concurrent resolution was concurred in and on his own motion the motion to reconsider was laid on the table. (SJ at 554)

Shortly thereafter, the Senate sent a communication to the House informing them of the Senate vote on H. C. R. No. 8. (HJ at 756) On July 1st, the House Committee on Enrollment reported that H. C. R. No. 8 had been duly and correctly enrolled. (HJ at 809) That same day, the following message was sent to the Senate—

I am directed to inform your honorable body that the Speaker of the House of Representatives has signed the following enrolled House Bills and House Concurrent resolutions . . . (SJ at 590)

H. C. R. No. 8 was duly signed by the Speaker, the President of the Senate and the

Governor, on July 1st, but the copy sent to Washington was unsigned in violation of Congressional Concurrent Resolution No. 6 and of Section 205 of the Revised Statutes.

Finally, H. C. R. No. 8 violated Articles 224 and 227 of the Louisiana State Constitution. Article 224 provided that—

> The taxing power may be exercised by the General Assembly for **State** purposes, . . .

Article 227 provided that—

> The taxing power shall be exercised only to carry on and maintain **the government of the State and the public institutions thereof,** to educate the children of the State, to preserve the public health, to pay the principal, and interest of the public debt, to suppress insurrection, to repel invasion or defend the State in time of war, to provide pensions for indigent Confederate soldiers and sailors, and their widows, to establish markers or monuments upon the battlefields of the country commemorative of the services of Louisiana soldiers on such fields, to maintain a memorial hall in New Orleans for the collection and preservation of relics and memorials of the late civil war, and for levee purposes, as hereinafter provided. (emphasis added)

Obviously, H. C. R. No. 8 was a grant of power far outside these State Constitutional limits.

The ratification of the proposed Sixteenth Amendment in Louisiana was deficient for the following reasons—

1. Apparent lack of jurisdiction of the certified copy of the Congressional Joint Resolution

2. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that H. C. R. No. 8 contained the following changes to the official Congressional Joint Resolution—

a. the preamble was modified

b. the comma following the word "incomes" was deleted

3. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

4. Violation of Articles 224 and 227 of the Louisiana State Constitution in that H. C. R. No. 8 exercised taxing power outside of the Constitutional constraints

Delaware—February 3rd, 1913

On January 22nd, 1913, the following took place in the Senate of the State of Delaware—

> Mr. Gormley gave notice that on tomorrow or some future day he would ask leave to introduce a Senate Joint Resolution, entitled: "Senate Joint Resolution ratifying the proposed amendment to the Constitution of the United States, giving Congress power to lay and collect taxes on income." (SJ at 358)

On the 28th of that month, Mr. Gormley introduced Senate Joint Resolution No. 4, which was entitled—

> S. J. R. No. 4. Ratifying the proposed amendment to the Constitution of the United States, giving Congress power to lay and collect taxes on incomes, which was read a first time and the joint resolution was read a second time, by title, and referred to the Committee on Miscellaneous. (SJ at 369)

On February 3rd, Senator Gormley withdrew S. J. R. No. 4 from consideration and there was no objection, (SJ at 403) but, later that same day, S. J. R. No. 4, also by Senator Gormley, reappeared under a new format and a new designation as—

> S. Concurrent R. No. 5, entitled
> Senate Concurrent Resolution.
> Senate concurrent resolution ratifying the proposed amendment to the Constitution of the United States, giving Congress power to lay and collect taxes on incomes.
> Be it Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met:
> That Whereas the Congress of the United States has proposed an amendment to the Constitution of the United States which provides that "The Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States and without regard to any census or enumeration."
> And Whereas, It requires the ratification of the Legislatures of three-fourths of the several States to make the proposed amendment a part of the Constitution; therefore,
> Be it Resolved, that the Legislature of Delaware ratifies and adopts the proposed amendment to the Federal Constitution;
> And be it further Resolved, That the Secretary of State of Delaware be and is hereby directed to notify the Secretary of State of the United States of the action of the Legislature. (SJ at 403)

Delaware's version of the proposed Sixteenth Amendment, as noted in the memorandum of the Solicitor of the Department of State (at 8), omitted "Article XVI" and all

commas as well. In addition, the original preamble of the Congressional Joint Resolution was completely changed.

Thus, the Legislature of the State of Delaware was in violation of their duty to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House** Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill had been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must concur exactly and precisely with Congress in a proposed Constitutional amendment.

Senate Concurrent Resolution No. 5 was read, perhaps, once, although it is unclear from the record whether it was read at all. Immediately after the introduction of S. C. R. No. 5, the journal shows the following—

> And on his further motion was adopted and ordered to the House for concurrence.
>
> Mr. Cubbage, Clerk of the House, being admitted, informed the Senate that the House had concurred in the following Senate Concurrent Resolution:
>
> S. C. R. No. 5.
>
> Senate concurrent resolution, ratifying the proposed amendment to the Constitution of the United States giving Congress power to lay and collect taxes on incomes.
>
> And returned the same to the Senate. (SJ at 403)

There is no evidence of any other reading of this resolution, and there is no evidence of the Yeas and Nays on S. C. R. No. 5 in the Senate. The Delwaware Constitution, Article II, Section 10, stated—

> . . . The names of the members voting for and against any bill or joint resolution, except in relation to adjournment, shall on the final vote be entered on the journal . . . No bill or joint resolution, except in relation to adjournment, shall pass either House unless the final vote shall have been taken by yeas and nays, nor without the concurrence of a majority of all members elected to each House.

The Senate journal shows a total lack of activity between the transmission of S. C. R. No. 5 to the Delaware House and its nearly immediate return from the House. This total absence of legislative activity is completely inconsistent with the recorded history shown on the House journal for the period between the time S. C. R. No. 5 was recorded, by the House journal, as having been transmitted to the House and the time that the vote upon S. C. R. No. 5 was taken and S. C. R. No. 5 was sent back to the Senate.

On page 300 of the Delaware House Journal for the session of 1913, it is recorded that S. C. R. No. 5 was presented to the House by Mr. Stoops, Secretary of the Senate. (HJ at 300) Thereafter, the House proceeded to conduct other business, including—

1. House Bill No. 66 was taken up for consideration, was read in full, paragraph by paragraph, was voted upon, the votes being recorded, and **ordered to the Senate for concurrence.** (HJ at 300)

2. House Bill No. 76 was taken up for consideration, was read in full, paragraph by paragraph, was voted upon, the votes being recorded, and **ordered to the Senate for concurrence.** (HJ at 301)

3. Mr. Stoops, **the Secretary of the Senate**, delivered the message to the House that the House Concurrent Resolution dealing with state representation at the Presidential inauguration of Woodrow Wilson was passed. (HJ at 302)

4. A House committee was appointed by the Speaker. (HJ at 302)

5. House Bill No. 97 was introduced, was read the first and second times and was referred to committee. (HJ at 302)

6. House Bill No. 98 was introduced, was read the first and second times and was referred to committee. (HJ at 302)

7. House Bill No. 70 was reported out of committee. (HJ at 303)

For the Senate journal to have been consistent with what was reported in the House journal, it would have required that the following be reported in the Senate journal prior to the return of S. C. R. No. 5 from the House:

1. that Mr. Cubbage, Clerk of the House, delivered House Bill No. 66 and House Bill No. 76 to the Senate for concurrence

2. the Senate action in concurring on the House Concurrent Resolution, mentioned in 3. above, including consideration, vote, and the recording of the Yeas and Nays

3. most critically, the evidence of the cause for Mr. Stoops showing up in the House on page 302 of the House Journal, namely, that the result of the vote on that House Concurrent Resolution was to be delivered to the House.

Instead, neither House bill No. 66 nor House Bill No. 76 show up in the Senate journal delivered by Mr. Cubbage, or by anyone else. The House Concurrent Resolution does appear, but, **subsequent** to the return of S. C. R. No. 5 which, according to the

House journal, must have occurred prior to the return of S. C. R. No. 5. Furthermore, Senators Ewing and Carter were named in the Senate journal as the couriers of that House Concurrent Resolution, not Mr. Stoops, as recorded in the House journal. So, either the House journal, or the Senate journal, or both, failed to properly record what transpired between the supposed, incompletely recorded, Senate vote on S. C. R. No. 5 and the return of S. C. R. No. 5 from the House. (See Appendix)

With no intervening action in the House relating to S. C. R. No. 5, the vote was taken on that resolution in the following manner—

> On motion of Mr. Arthurs the resolution (S. C. R. No. 5) entitled:
> Senate Concurrent Resolution, ratifying the proposed amendment to the Constitution of the United States giving Congress power to lay and collect taxes on incomes.
> Was taken up for consideration, and on his further motion was read a third time, by paragraphs, in order to pass the House.
> On the question, "Shall the resolution pass the House?"
> The yeas and nays were ordered, which being taken, were as follows . . .
> 27 in the affirmative, none in the negative.
> So the question was decided in the affirmative, and the resolution, having received the required constitutional majority,
> Was declared adopted.
> Ordered that the Senate be informed thereof, and the resolution returned to that body.(HJ at 303)

In the House, the Yeas and Nays were duly recorded, unlike the treatment accorded S. C. R. No. 5 in the Senate. S. C. R. No. 5 does appear in the official publication, *Laws of the State of Delaware* for the 94th session, and, as such, it should have been treated procedurally as a bill or joint resolution.

The memorandum of the Solicitor of the Department of State (at 5) notes that S. C. R. No. 5 as transmitted to the Secretary of State of the United States was not signed by the Governor of Delaware, however, S. C. R. No. 5 having been published as a law, the ratification resolution should have been, under Article III, Section 18 of the Delaware State Constitution, presented to the Governor. There is no record of it having been so presented. S. C. R. No. 5 was signed by no one as received in Washington, D. C., and was, therefore, uncertified.

So, Delaware's supposed ratification of the Sixteenth Amendment was nullified by any one of the following—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. C. R. No. 5 contained the following changes to the official Congressional Joint Resolution
   a. the designation "Article XVI" was deleted
   b. all commas were omitted
   c. the original preamble was modified
2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

Finally, the journals show a clear conflict in the events surrounding the passage of S. C. R. No. 5 in the Senate journals as opposed to supposedly the same events in the House journals, casting severe doubt upon the reliability of the journals relative to these particular events in the Delaware Legislature.

Wyoming—February 3rd, 1913

On July 30th, 1909, the Governor of Wyoming, Bryant B. Brooks, sent a letter of acknowledgement to Philander Knox, the Secretary of State of the United States, indicating that the copy of Senate Joint Resolution No. 40 received from Knox would be submitted to the next session of the Wyoming Legislature.

On May 24th, 1912, the new Governor of Wyoming, Joseph H. Carey, sent another letter to Knox indicating that the certified copy received by Brooks was no longer on file and that the proposed amendment had not previously been considered by the Wyoming Legislature.

On the 14th of January, 1913, the Governor of Wyoming included the following reference to the proposed Sixteenth Amendment in his address—

Amendments to the Constitution of the United States.

There are now pending two amendments to the Constitution of the United States under the terms of that instrument, for ratification or rejection by the Wyoming Legislature. These amendments have certified to the Governor of the state by the Secretary of State of the United States.

One of these amendments is known as the "Income Tax Amendment" and is as follows:

S. J. Res. 40.

Sixty-First Congress of the United States of America. At the First Session.

Begun and held at the City of Washington on Monday, the fifteenth day of March, one thousand nine hundred and nine.

JOINT RESOLUTION.

Proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein). That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution:

"Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

* * *

This amendment has been much discussed by the people of the United States and has been ratified by nearly the number of states necessary to make it a part of the Constitution of the United States, and I ask action by your honorable body on the proposed amendment.

The wisdom of the amendment has been much discussed. Those in favor of it

give as the chief reason that the general government should be given this **additional** taxing resource for the raising of revenue; while those opposed argue that the revenue that may be derived from this source should belong to the several states where derived; that the states need the revenue, while the United States has more revenue now than it can wisely expend. (SJ at 41) (emphasis added)

The version of the proposed Sixteenth Amendment which the Governor transmitted to the Legislature was essentially correct except for the change of the comma following the word "therein" in the preamble and the change of the word "States" to "states." All other wording and punctuation transmitted by the Governor was the same as in the Congressional Joint Resolution.

On the 23rd of January, Senate Joint Resolution No. 2 was introduced by Senator Kendrick, entitled as—

> Senate Joint Resolution ratifying an amendment to the Constitution of the United States of America granting power to Congress to **levy** a tax on incomes. (SJ at 66) (emphasis added)

S. J. R. No. 2 was read for the first time "by title only," i.e., the full text of S. J. R. No. 2 was not read on the floor of the Senate. The resolution was then referred to Committee No. 15, Federal Relations, Indian and Military Affairs, and ordered printed. (SJ at 66)

On the 28th, S. J. R. No. 2 was reported as having been correctly printed. (SJ at 87) On the 31st, the Committee on Federal Relations, Indian and Military Affairs recommended passage of S. J. R. No. 2. (SJ at 113)

When S. J. R. No. 2 was taken up for consideration in the Senate on February 3rd, Senator Beck moved that the rules of the Senate be suspended. That motion passed by a margin of 25 to 2 in favor. (SJ at 116) The Committee of the Whole made the recommendation—

> That S. J. R. No. 2 . . .
> Senate Joint Resolution ratifying an amendment to the Constitution of the United States of America granting power to Congress to **levy** a tax on incomes.
> do pass . . . (SJ at 116) (emphasis added)

The report of the Committee of the Whole was adopted and S. J. R. No. 2 immediately went to its second reading, which was again by title only.

> Under suspension of rules.
> The following Senate Joint Resolution was read second time by title only, ordered to be considered the engrossed copy and read the third time.
> S. J. R. No. 2 . . .
> Senate Joint Resolution ratifying an amendment to the Constitution of the United States of America granting power to Congress to **levy** a tax on incomes. (SJ at 116) (emphasis added)

Thus, just the title of S. J. R. No. 2 became the engrossed copy, or final draft, of S. J. R. No. 2 for legislative purposes in the Senate and it was in that form that S. J. R. No. 2 was read for the third time. It was also in that form that S. J. R. No. 2 was transmitted to the House for concurrence. S. J. R. No. 2 was taken up for a vote with the following result—

> Under suspension of rules.
> The following Senate Joint Resolution was read for the third time, placed upon its final passage and passed by the Senate by the vote indicated:

S. J. R. No. 2 . . .
Senate Joint Resolution ratifying an amendment to the Constitution of the United States of America granting power to Congress to **levy** a tax on incomes. (SJ at 116) (emphasis added)

A roll call was then taken for S. J. R. No. 2, as engrossed, and the result was a margin of 24 to 3 in favor. (SJ at 116) Having been given, by the Governor in his address, the exact wording proposed and desired by Congress for the Sixteenth Amendment, including the word "lay," the Wyoming Senate insisted on, not only emphasizing the word "levy" in the title of S. J. R. No. 2, but, also, in the transformation of that title into the final draft of the resolution, a violation of Article 3, Section 20 of the Wyoming State Constitution—

> No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

The title of S. J. R. No. 2, engrossed as the final draft, then went to the House for consideration and concurrence that same day, the 3rd of February. The Senate sent the engrossed S. J. R. No. 2 as follows—

Senate Joint Resolution No. 2.
Senate Joint Resolution ratifying an amendment to the Constitution of the United States of America granting power to Congress to **levy** a tax on incomes. (HJ at 144) (emphasis added)

The House journal never records the receipt of any copy of S. J. R. No. 2 except the title of S. J. R. No. 2 engrossed into the final draft of the Senate, which draft was voted upon by both houses. The Committee of the Whole of the House reported S. J. R. No. 2 back to the House with a favorable recommendation and that report was adopted. (HJ at 144)

> Upon request of Mr. Sullivan of Big Horn, unanimous consent of the House was granted, and Senate Joint Resolution No. 2 ratifying an amendment to the Constitution of the United States of America granting power to Congress to levy a tax on incomes was read the second and third times under suspension of the rules and placed upon final passage, passing the House by the following vote . . . (emphasis added)
> 48 in the affirmative to 7 in the negative. (HJ at 144)

The Speaker then announced that S. J. R. No. 2 had passed the House. (HJ at 144) The Governor, shortly thereafter, hastily sent a telegram to the United States Department of State announcing that the Legislature of Wyoming had ratified the proposed Sixteenth Amendment. The President of the Senate (SJ at 133) and the Speaker of the House (HJ at 165) did not sign S. J. R. No. 2, however, until the next day, the 4th. In both cases, S. J. R. No. 2, as engrossed and enrolled, was read—

> Senate Joint Resolution ratifying an amendment to congress to **levy** a tax on incomes. (emphasis added)

All of the documents pertaining to S. J. R. No. 2, as passed, show the date of signing as February 3rd. The journals show the date of signing as February 4th. The documents also show that both the President of the Senate and the Speaker of the House signed a different version of S. J. R. No. 2 than that which was voted upon and passed by the

members of both houses. The version of S. J. R. No. 2 which was transmitted by the Secretary of State of Wyoming, Frank L. Houx, to the Secretary of State of the United States read as follows:

> **Senate Joint Resolution ratifying an amendment to the Constitution of the United States of America granting power to Congress to levy a tax on incomes.**
>
> **WHEREAS**, Both houses of the sixty-first Congress of the United States of America at its first session by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to-wit:
>
> A JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.
>
> RESOLVED by the Senate and the House of Representatives of the United States of America in Congress Assembled (Two-thirds of Each House Concurring therein), That the following Article is proposed by an amendment to the Constitution of the United States, which when ratified by the legislature of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution, namely:
>
> ARTICLE XVI. The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states and without regard to any census or enumeration.
>
> THEREFORE, be it
>
> **RESOLVED** BY THE SENATE OF THE STATE OF WYOMING, THE HOUSE OF REPRESENTATIVES CONCURRING, That the said proposed amendment to the Constitution of the United States of America be, and the same is hereby ratified by the legislature of the State of Wyoming.
>
> That certified copies of this preamble and joint resolution be forwarded by the Secretary of State of this state to the President of the United States, Secretary of State of the United States, to the presiding officer of the United States Senate, to the Speaker of the House of Representatives of the United States, and to each Senator and Representative of the United States, and to each Senator and Representative in Congress from the State of Wyoming.
>
> By the President, BIRNEY H. SAGE.
>
> By the Speaker, MARTIN L. PRATT.
>
> 10:52 A. M., February 3, 1913.
>
> JOSEPH M. CAREY, Governor.

Note the time and date of signing. The Senate journal shows that S. J. R. No. 2 was signed after 2 P. M. on the 4th of February in the Senate and the House journal shows that it was also signed on the 4th of February in the House. This document is, thus, false on its face, its date of signing not coincident to that recorded on both journals, and, furthermore, S. J. R. No. 2 could not have been signed in the House at precisely the same time as it was being signed in the Senate, unless, Article 3, Section 28 of the Wyoming Constitution had been violated. Article 3, Section 28 of the Wyoming Constitution provided that—

> The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislature immediately after their titles have been publicly read, and the fact of signing shall be at once entered upon the journal.

Had the President of the Senate followed Constitutional procedure by having the title of S. J. R. No. 2 read, immediately signing the document and then having "the fact of

signing . . . at once entered upon the journal," and had the Speaker of the House done likewise, both of them could not possibly have signed that same document at 10:52 A. M. on the same day.

If the time and date on the document are purported to be the date of the Governor's approval, that is an entirely different Constitutional problem in which the Governor signed the document before the President of the Senate and the Speaker of the House signed it.

In reply to Governor Carey's telegram, the Secretary of State of the United States, Philander Knox, sent a telegram back to Carey which said—

> Replying to your telegram of 3rd you are requested to furnish certified copy of Wyoming's ratification of Income Tax Amendment **so there may be no question as to compliance** with Section 205 of Revised Statutes. (emphasis added)

The Governor's response was to have Secretary of State Houx send two copies of S. J. R. No. 2. Appended to the transmitted copies of S. J. R. No. 2 were certificates from Houx, attesting that the two documents were just like the original on file and that they had passed the Wyoming legislature.

According to the *SESSION LAWS OF THE STATE OF WYOMING* PASSED BY THE TWELFTH STATE LEGISLATURE, for the dates January 14th, 1913 to February 22nd, 1913, the text of S. J. R. No. 2 was as follows—

SENATE JOINT RESOLUTION NO. 2

Senate Joint Resolution ratifying an amendment to the Constitution of the United States of America granting power to Congress to levy a tax on incomes.

Whereas, Both houses of the sixty-first Congress of the United States of America at its first session by a constitutional majority of two-thirds thereof, made the following proposition to amend the constitution of the United States of America in the following words, to-wit:

A JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Resolved by the Senate and the House of Representatives of the United States of America in Congress Assembled (Two-Thirds of each House concurring therein):

That the following article is proposed by an amendment to the Constitution of the United States, which when ratified by the legislature of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution, namely:

ARTICLE XVI. The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states and without regard to any census or enumeration.

Therefore, be it

Resolved by the Senate of the State of Wyoming the House of Representatives Concurring, That the said proposed amendment to the constitution of the United States of America be, and the same is hereby ratified by the legislature of the state of Wyoming.

That certified copies of this preamble and joint resolution be forwarded by the Secretary of State of this State to the President of the United States, Secretary of State of the United States, to the presiding officer of the United States Senate, to the Speaker of the House of Representatives of the United States, and to each Senator and Representative of the United States, and to each Senator and Representative in Congress from the State of Wyoming.

The version of S. J. R. No. 2 transmitted to Washington contains the following changes to the official version—

1. the preamble was amended
a. the word "assembled" was changed to "Assembled"
b. the word "article" was changed to "Article"
c. the word "as" was changed to "by"
d. the word "legislatures" was changed to "legislature"
e. the word "Constitution" was changed to "constitution"
f. the comma after the word "which" was deleted
g. the word "namely" was added at the end.
2. the word "Congress" was changed to a common noun
3. the word "States" was changed to a common noun.

Changing the word "as" to "by" in the preamble completely changes the intent of the Congressional Joint Resolution. The resolution now suggests that another amendment proposes the amendment.

Thus, this S. J. R. No. 2 was in violation of the duty which the Wyoming Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted **in precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill **in the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must concur exactly and precisely with Congress in a proposed Constitutional amendment.

Finally, S. J. R. No. 2 violated Article XV, Section 13 of the Wyoming State Constitution which provided that—

> No tax shall be levied, except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

S. J. R. No. 2 does not state the object to which the funds collected by the tax to be imposed under that resolution will be applied.

The purported ratification of the proposed Sixteenth Amendment by the Wyoming Legislature was, thus, defective for several reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress—S. J. R. No. 2 contained the following modifications from the original—

a. the word "Congress" was changed to a common noun

b. the word "States" was changed to a common noun

c. the original preamble was amended

i. the word "assembled was changed to "Assembled"

ii. the word "article" was changed to "Article"

iii. the word "as" was changed to "by"

iv. the word "legislatures" was changed to "legislature"

v. the word "Constitution" was changed to a common noun

vi. the comma after the word "which" was deleted

vii. the word "namely" was added

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and required by Section 205 of the Revised Statutes of 1878

3. The version of S. J. R. No. 2 as engrossed and voted upon was not the resolution transmitted to Washington, in that, only a radically shortened version, the title only, was voted upon.

4. In violation of Article 3, Section 20 of the Wyoming State Constitution, S. J. R. No. 2 was amended into a title only resolution on its passage through the Senate

5. Unless a violation of the Constitution of the State of Wyoming had occurred, or unless the Wyoming House and Senate journals were fraudulent, the resolution which passed the Wyoming State Legislature could not have been the resolution which was transmitted to Washington no matter what it was called, due to the discrepancy in time in the journals

6. The document sent to Washington as an official notice of Wyoming's ratification was false on its face, having the date of signing incorrect.

7. Violation of Article XV, Section 13 of the Wyoming State Constitution in that S. J. R. No. 2 does not state distinctly the object to which the funds to collected under any tax imposed as a result of S. J. R. No. 2 will be applied

New Jersey—February 5th, 1913

On February 7th, 1910, the Governor of New Jersey, John Franklin Fort, delivered a message to the legislature by Mr. Fort, his Secretary, in which he laid before them his views on the proposed Sixteenth Amendment. Governor Fort stated that the result of the decision of U. S. Supreme Court in **Pollock v. Farmers Loan and Trust Company, 157 U. S. 429**, was to—

> . . . practically destroy the laying of any tax whatever upon income unless based upon some principle of capitation.

The tax statute struck down in that landmark decision "was not in proportion to the census or enumeration directed to be taken under the Federal Constitution." However, the Governor believed that taxation under the constraints of the capitation principle "would be of little, if any, value, and would fail to reach **persons with large incomes who should be the ones to bear the burden of such taxation**. Fort went on to say that the sort of taxation which would be permitted under the proposed Sixteenth Amendment would reach "**those who are essentially rich and whose holdings are large.**" Fort also said that taxation was "borne very largely, and out of all due proportion, by the citizens of moderate means," instead of by "**the man of many times as great wealth [who] escapes a large share of just taxation.**"

Fort also implied that the only situation under which such a tax would be actually be levied would be an emergency situation, a situation which would result in those whom Fort hoped would be the targets of this income tax, the wealthy, being taxed only in emergency situations.

The Governor then discussed the proposed tax in terms of an extremely innocuous rate of "one per centum" which would have meant that "the holder of a one thousand dollar four per cent. State or municipal bond would pay an income tax on forty dollars per year, which would amount to forty cents per annum."

Fort made an appeal for ratification based upon patriotism and the tiny tax he had projected—

> If the patriotism of our citizens and the interest of our financial institutions, who take and hold State and municipal securities, is at so low an ebb as to cause such a tax to affect the value of State or municipal securities, we are, indeed, in an unfortunate condition in the Republic. No one can believe that such a situation exists.

Finally, Fort rejected the contention that the proposed amendment would injure the States power to tax and put the responsibility for any unjust taxation resulting from the amendment in the hands of the voters.

The certified copy of Senate Joint Resolution No. 40 was then transmitted to the New Jersey legislature—

> S. J. Res. 40.
> **Sixty-first Congress of the United States of America, at the First Session,**
> Begun and held at the City of Washington on Monday, the fifteenth day of March, one thousand nine hundred and nine.
> JOINT RESOLUTION.
> Proposing an amendment to the Constitution of the United States.
> **Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),** That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:
> "Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

In the New Jersey House of Assembly, the following occurred on January 15th, 1913—

> (Mr. Hennessy), on leave, introduced
> Assembly Joint Resolution No. 2, entitled "Joint resolution ratifying an amendment of the Constitution of the United States,"
> Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Judiciary. (HJ at 34)

On the 20th of January, another, unexplained, introduction of A. J. R. No. 2 was had in the House of Assembly—

> Mr. Hennessy, on leave, introduced
> Assembly Joint Resolution No. 2, entitled "Joint resolution ratifying an amendment of the Constitution of the United States,"
> Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Judiciary. (HJ at 45)

The next day, an attempt was made to put A. J. R. No. 2 on its final reading in order to take it up for a vote—

> Mr. Hennessy then moved that the rules be suspended, and that
> Assembly Joint Resolution No. 2, entitled "Joint resolution ratifying an amendment of the Constitution of the United States,
> Be taken up and placed on third reading, which motion, upon a **viva voce** vote, was declared lost by the Speaker. (HJ at 62)

On the 27th, A. J. R. No. 2 was taken up again—

> On motion of Mr. Hennessy,
> Assembly Joint Resolution No. 2, entitled "Joint resolution ratifying an amendment of the Constitution of the United States,"
> Was taken up for third reading, and passed by the following vote:
> In the affirmative were . . . 49.
> In the negative . . . 8. (HJ at 93)

On the 28th, the House sent the Senate a communication informing the Senate of

their action on A. J. R. No. 2—

> . . . the House of Assembly has passed the following . . . joint resolution:
>
> * * *
>
> Assembly Joint Resolution No. 2, entitled "Joint resolution ratifying an amendment of the Constitution of the United States,"
>
> In which concurrence of the Senate is requested. (SJ at 70)
>
> A. J. R. No. 2 was taken up shortly thereafter Assembly Joint Resolution No. 2, entitled "Joint resolution ratifying an amendment of the Constitution of the United States,"
>
> Was taken up, read for the first time by its title, ordered to have a second reading, and referred to the Committee on Judiciary. (SJ at 70)

On February 3rd, A. J. R. No. 2 was reported out of committee—

> Mr. Davis, Chairman of the Committee on Judiciary, reported Assembly Joint Resolution No. 2, entitled "Joint resolution ratifying an amendment of the Constitution of the United States,"
>
> Favorably, without amendment. (SJ at 89)

Later the same day, A. J. R. No. 2, along with some other bills, was taken up for consideration—

> Assembly Joint Resolution No. 2, entitled "Joint resolution ratifying an amendment of the Constitution of the United States,"
>
> Were severally taken up, read a second time, considered by sections, agreed to, ordered to be printed, and to have a third reading. (SJ at 99)

The next day, A. J. R. No. 2 was taken up again—

> Assembly Joint Resolution No. 2, entitled "Joint resolution ratifying an amendment of the Constitution of the United States,"
>
> Was taken up and read a third time.
>
> Upon the question, "Shall this Joint Resolution pass?" it was decided as follows:
>
> In the affirmative were . . . 12.
>
> In the negative were . . . 9.
>
> The Secretary was directed by the President to carry said Joint Resolution to the House of Assembly and inform that body that the Senate has passed the same, without amendment. (SJ at 107)

Of the twenty-one senators voting only 12, or 57%, voted in the affirmative, short of a two-thirds majority. The Secretary of the Senate transmitted the following message—

> "**Mr. Speaker:** February 4th, 1913.
>
> I am directed by the Senate to inform the House of Assembly that the Senate has passed the following joint resolution:
>
> Assembly Joint Resolution No. 2, entitled "Joint resolution ratifying an amendment of the Constitution of the United States,"
>
> Without amendment.
>
> WILLIAM L. DILL,
>
> **Secretary of the Senate.**
>
> (HJ at 217)

On the 17th of February, A. J. R. No. 2 was sent to Governor Woodrow Wilson—

Mr. Nutting, Chairman of the Committee on Passed Bills, reports having delivered the following Assembly bills to the Governor for his signature:

* * *

Assembly Joint Resolution No. 2, entitled "Joint resolution ratifying an amendment of the Constitution of the United States," (HJ at 381)

Though it is not recorded in the journals, the President of the Senate, the Speaker of the House of Representatives and the Governor all signed A. J. R. No. 2. The copy which they signed read—

ASSEMBLY JOINT RESOLUTION, No. 2.

STATE OF NEW JERSEY.

INTRODUCED JANUARY 15, 1913.
By Mr. HENNESSY.
Referred to Committee on Judiciary.

JOINT RESOLUTION ratifying an amendment to the Constitution of the United States.

BE IT RESOLVED by the Senate and General Assembly of the State of New Jersey:

I. The amendment to the Constitution of the United States proposed at the **second** session of the sixty-first Congress, by a resolution of the Senate and House of Representatives of the United States of America, in Congress Assembled, to the several State Legislatures, be and the same is hereby, upon the part of this Legislature, ratified and made a part of the Constitution of the United States of America, said amendment having been approved on the fifteenth of March, one thousand nine hundred and nine, and is in the following words, to wit:

"Article XVI. The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

The copy sent to Washington, which was not signed, read—

STATE OF NEW JERSEY.
Joint Resolution No. 1

JOINT RESOLUTION ratifying an amendment to the Constitution of the United States.

BE IT RESOLVED by the Senate and General Assembly of the State of New Jersey:

I. The amendment to the Constitution of the United States proposed at the **second** session of the sixty-first Congress, by a resolution of the Senate and House of Representatives of the United States of America, in Congress Assembled, to the several State Legislatures, be and the same is hereby, upon the part of this Legislature, ratified and made a part of the Constitution of the United States of America, said amendment having been approved on the fifteenth of March, one thousand nine hundred and nine, and is in the following words, to wit:

"Article XVI. The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

Approved, 5 Feb'y, 1913
WOODROW WILSON,
Governor.

In both cases, the original preamble as transmitted to the New Jersey Legislature by Governor Fort was changed, most significantly in changing the Congressional session from the "first" to the "second." And, in both cases, the word "Congress" was changed to a common noun. Such changes were a violation of the duty which the New Jersey Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House**. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must concur exactly and precisely with Congress in a proposed Constitutional amendment.

The Legislature of New Jersey approved Assembly Joint Resolution No. 2, but the Secretary of State of New Jersey sent an unsigned copy of something called Joint Resolution No. 1 to Washington, D. C. Though the text of Joint Resolution No. 1 is similar to that of A. J. R. No. 2 there are significant discrepancies in the signatures which these two documents bear. The archival copy of A. J. R. No. 2 bears the signatures of the Governor, the Speaker of the House and the President of the Senate. The copy of J. R. No. 1 sent to Washington bears Wilson's name typed out but neither of the legislative officers' names are likewise typed out. It is not clear whether the wording of A. J. R. No. 2, as approved and printed, is correct since it never appears in either journal, nor does it ever appear in the journals that a careful comparison was made, nor does it ever appear

in the journals when the presiding officers of either house signed A. J. R. No. 2.

The Legislature of the State of New Jersey, thus, committed the following violations in the ratification process—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that A. J. R. No. 2 contained the following changes to the official Congressional Joint Resolution—

a. the preamble was modified failing to correctly identify which session of Congress passed S. J. R. No. 40

b. the word "Congress" was changed to a common noun

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and required by Section 205 of the Revised Statutes of 1878

3. Failure to approve A. J. R. No. 2 by a two-thirds vote in the Senate

4. Failure to approve the resolution sent to Washington

New Mexico—February 5th, 1913

Although no transmittal of the certified copy of the Congressional Joint Resolution to the Legislature of New Mexico was ever recorded, on January 16th, 1913, the following three Senate Joint Resolutions were introduced—

> Senate Joint Resolution No. 1, Ratifying an Amendment Proposed by the Sixty-First Congress of the United States of America on the 15th day of March, 1909, to the Constitution of the United States and Designated as Article XVI. Introduced by Mr. Evans. Read first and second time by title, ordered translated and printed, and referred to the Committee on Constitutional Amendments.
>
> Senate Joint Resolution No. 2, Ratifying a proposed amendment to the Constitution of the United States authorizing Congress to lay and collect taxes on income. Introduced by Mr. Hinkle. (SJ orig at 10)
>
> Read first and second time by title, ordered translated and printed, and upon motion by Mr. Holt referred to the Committee on Constitutional Amendments.
>
> Senate Joint Resolution No. 3, Ratifying the proposed Sixteenth Amendment to the Constitution of the United States. Introduced by Mr. Clark. Read first and second time by title, ordered translated and printed, and referred to the Committee on Constitutional Amendments. (SJ orig at 11)

On the 30th of that month, without any intervening action on any of the Senate Joint Resolutions introduced on the 16th, the following took place—

> By unanimous consent the Senate reverted to bills on third reading and the following was taken up for consideration:
>
> Senate Substitute for Senate Joint Resolution No. 3 read a third time in full preparatory to its passage.
>
> Mr. Holt moved that Senate Substitute for Senate Joint Resolution No. 3, do now pass, and the roll call resulted as follows . . .

The roll call showed 19 Ayes, 1 Nay and 4 paired (4 pairs of Senators, wherein one Senator in each pair was absent and showed that he would vote in the opposite manner as the Senator in the pairing who was present).

> The result being in the affirmative, the President declared Senate Substitute for Senate Joint Resolution No. 3, to have passed the Senate. (SJ at 59)

There had been no previous indication that S. J. R. No. 3 was being amended or that any amendments to S. J. R. No. 3 had been approved by the Senate and there was no subsequent action on Senate Substitute for Senate Joint Resolution No. 3 in the Senate.

The Constitution of the State of New Mexico contains the following legislative provisions in Article IV—

> Section 15. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose. . . . No bill, except bills to provide to the public peace, health and safety, and the codification or revision of the laws, shall become a law unless it has been printed, and read three different times in each house, not more than two of which readings shall be on the same day, and the third of which shall be in full.
>
> Section 21. Any person who shall, without lawful authority, materially change or alter, or make away with, any bill pending in or passed by the legislature, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the penitentiary for not less than one year nor more than five years.

A substitute resolution is a resolution which is substituted for the original resolution and is different than, or amended from, the original resolution. No indication was ever given in the Senate journal of an amendment to, or substitution for, S. J. R. No. 3. It cannot be determined whether S. J. R. No. 3 was altered or amended in violation of Article IV, Section 15 because the original version of S. J. R. No. 3 is not printed in full in the journals and the archival original is also not available. If that resolution was, in fact, in violation of Article IV, Section 15, whoever amended S. J. R. No. 3 was guilty of a violation of Section 21 and, thus, of a felony.

Immediately after the purported passage of Senate Substitute for Senate Joint Resolution No. 3 in the Senate, that resolution was not "enrolled and engrossed," nor was it "read publicly in full" in the Senate, nor was it "signed by the presiding officer" of the Senate "in open session," nor was that "fact of such reading and signing ... entered on the journal," all in violation of Article IV, Section 20 which provided that—

> Immediately after the passage of any bill or resolution, it shall be enrolled and engrossed, and read publicly in full in each house, and thereupon shall be signed by the presiding officers of each house in open session, and the fact of such reading and signing shall be entered on the journal. No interlineation or erasure in a signed bill, shall be effective, unless certified thereon in express terms by the presiding officer of each house quoting the words interlined or erasure be publicly announced in each house and entered on the journal.

On February 3rd, a message was sent to the House which reported that Senate Substitute for Senate Joint Resolution No. 3 had passed the Senate. The following action on Senate Substitute for S. J. R. No. 3 then took place immediately in the House—

> Upon motion by Mr. Clancy the rules were suspended and Senate Substitute for Senate Joint Resolution No. 3 was taken up and read in full.
>
> Mr. Clancy moved the adoption of the resolution; roll call ordered and resulted as follows . . .
>
> (36 Ayes, no Nays)
>
> Whereupon the Speaker declared Senate Substitute for Senate Joint Resolution No. 3 to have been unanimously adopted. (HJ at 63 & 64)

A suspension of rules in the New Mexico Legislature cannot suspend the provisions of the New Mexico State Constitution for the reading of bills three times, since there is no clause in Article IV, Section 15 allowing for such a suspension. Therefore, the House violated Section 15 by failing to read S. Sub. S. J. R. No. 3 three times as required. As in

the Senate, there was no action taken in the House subsequent to the vote on S. Sub. S. J. R. No. 3 and all the Constitutional violations which applied in the Senate applied in the House.

Since the full text, either in English or as translated into Spanish, of neither S. Sub. S. J. R. No. 3 nor the original resolution ever appeared in either journal of the New Mexico Legislature, it is uncertain exactly upon what the legislators in New Mexico voted. However, what appeared in Washington, D. C. on or about February 5th, 1913 were signed copies of the following—

1. A Certificate of Comparison from Antonio Lucero, the Secretary of State of New Mexico, dated February 5th, 1913, for "SENATE SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 3" which contained the Secretary's following sworn statement—

> . . . I have compared the following copy of the same, with the original thereof now on file, and declare it to be a correct transcript therefrom and of the whole thereof.

There is no indication given in this statement that the accompanying copy of the resolution was that which was actually passed by the New Mexico Legislature.

2. A copy of the resolution signed by the President of the Senate, the Chief Clerk of the Senate, the Speaker of the House, the Chief Clerk of the House, and the Governor—

> SENATE SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 3
>
> Ratifying an Amendment Proposed by the Congress of the United States of America to the Federal Constitution.
>
> Whereas, the Congress of the United States of America has proposed to the several states the following amendment to the Federal Constitution, viz.:
>
> "Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."
>
> Therefore, be it resolved by the Legislature of the State of New Mexico, that the State of New Mexico, by its Legislature, ratifies and assents to this amendment.

This is the wording which also appears in the publication, *Laws of the State of New Mexico*, for the legislative session of the New Mexico Legislature of January 14th, 1913 to March 3rd, 1913. The Solicitor's memorandum of February 15th, 1913 indicates that New Mexico was one of only four States the resolution of which contained no "errors." While the wording of the amendment itself contains no discrepancies from the original and official Congressional Joint Resolution, the original preamble was discarded. As the preamble to the Constitution of the United States itself explains the intent of the framers of that instrument, so does the preamble to a resolution proposing an amendment to that Constitution. It is impossible to give assent to the wording without also having given assent to the intent. And as the various original thirteen States had to agree to the preamble, the statement of intent, as well as to the body of the Constitution, so do all States in any subsequent modification of that Constitution have to agree to the statement of intent of any proposed amendment.

The journals having given no indication that S. Sub. S. J. R. No. 3 was ever signed as required by Article IV, Section 20 of the State Constitution, coupled with the lack of any record on the journals of the text of S. Sub. S. J. R. No. 3, there is no way to tell whether the copy signed and sent to Washington was a copy of that which was supposedly passed

in the Legislature.

In what was then the new State of New Mexico, the purported ratification of the Sixteenth Amendment in 1913 was deficient for the following reasons—

1. The Governor never made any apparent transmittal of the Congressional Joint Resolution to the Legislature leaving the Legislature without jurisdiction to act (see Kentucky)

2. As voted upon in the Senate, S. J. R. No. 3 was amended in potential violation of Article IV, Sections 15 and 21 of the New Mexico State Constitution.

3. After the vote in the Senate upon S. Sub. S. J. R. No. 3, the provisions of Article IV, Section 20 of the New Mexico Constitution requiring enrollment and engrossment, public reading in full, signing by the presiding officers and the recording of all those acts in the journal were not followed.

4. In the House, the provision in Article IV, Section 15 for the reading of the resolution three times was violated.

5. After the vote in the House, the same Constitutional provisions which were violated in the Senate were also violated in the House.

6. The New Mexico Legislature failed to assent to the intent of the proposed Sixteenth Amendment

West Virginia—February 4th, 1913

On July 28th, 1909, the private secretary to the Governor of West Virginia, sent a letter of acknowledgement, of receipt of the certified copy of the Congressional Joint Resolution, to Philander Knox, the Secretary of State of the United States. The Governor, William E. Glasscock, was apparently absent.

At the session of 1911, the Governor submitted the Congressional Joint Resolution, but the Legislature rejected the proposed Sixteenth Amendment. In his address to the 1913 Session, the Governor repeated his submission, (SJ at 115) and urged ratification.

The following resolution was introduced in the West Virginia Senate, on the 28th of January, 1913—

> SENATE JOINT RESOLUTION NO. 1—"To ratify the proposed amendment to the Constitution of the United States providing for laying and collecting taxes on incomes." "**Resolved by the Legislature of West Virginia, a majority of the members of each house agreeing thereto:**
>
> That the proposed amendments to the Constitution of the United States as follows: "The Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States and without regard to any census or enumeration," be ratified.
>
> Which resolution, under the rules, lies over one day. (SJ at 166)

The next day, S. J. R. No. 1, having been read just once, was taken up for a vote—

> SENATE JOINT RESOLUTION NO. 1—"To ratify the proposed amendment to the Constitution of the United States providing for laying and collecting taxes on incomes."
>
> Coming up in regular order for consideration, was read by the Clerk and adopted.
>
> On the adoption of the resolution,
>
> The ayes were:
>
> . . . -30.
>
> The noes were: None.
>
> **Ordered**, That Mr. Silver communicate to the House of Delegates the adoption of the resolution and request concurrence therein.
>
> Unanimous consent being given. (SJ at 209)

This vote in the Senate was in violation of Article VI, Section 29 of the West Virginia State Constitution—

> No bill shall become a law, until it has been fully and distinctly read, on three different days, in each House, unless, in case of urgency, by a vote of four-fifths of the members present, taken by yeas and nays on each bill, this rule be dispensed with: Provided, in all cases, that an engrossed bill shall be fully and distinctly

read in each House.

In the House, the following was introduced on the 28th—

HOUSE JOINT RESOLUTION NO. 3.—"Joint Resolution of the Legislature of the State of West Virginia, ratifying and approving a proposed amendment to the constitution of the United States, providing for a tax on incomes."

Whereas, The Sixty-first Congress of the United States of America, at the First Session thereof, begun and held at the City of Washington on Monday, the fifteenth day of March, one thousand nine hundred and nine, proposed an amendment to the Constitution of the United States, as follows:

"Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several states and without regard to any census or enumeration." Therefore be it

Resolved by the Legislature of the State of West Virginia, a majority of each House concurring therein:

That the foregoing resolution be and the same is hereby ratified and approved.

Referred to the Committee on the Judiciary. (HJ at 150)

Also, on the 28th, the following resolution was introduced in the House—

HOUSE JOINT RESOLUTION NO. 7.—"Ratifying and approving the proposed amendment to the constitution of the United States, relative to income tax."

Resolved by the Legislature of West Virginia, a majority of each House agreeing thereto:

Whereas, The sixty-first Congress of the United States of America, at the first session begun and held at the city of Washington, on Monday, the fifteenth day of March, nineteen hundred and nine, proposed an amendment to the constitution of the United States, in words and figures as follows:

"Article XVI. Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several states and without regard to any census or enumeration." Therefore be it

"**Resolved by the Legislature of West Virginia:**

"That the foregoing resolution being the sixteenth amendment to the Constitution of the United States be, and the same is hereby approved and ratified."

Referred to the Committee on the Judiciary. (HJ at 157)

On the 30th of January, the House received a message from the Senate informing them of the Senate's action on S. J. R. No. 1, and requesting concurrence.

On the 31st, H. J. R. No. 3 was favorably reported out of committee. (HJ at 219) On that same day, S. J. R. No. 1 was read once and taken up for a vote—

SENATE JOINT RESOLUTION NO. 1—"To ratify the proposed amendment to the Constitution of the United States providing for laying and collecting taxes on incomes."

"**Resolved by the Legislature of West Virginia, a majority of the members of each house agreeing thereto:**

That the proposed amendments to the Constitution of the United States as follows: "The Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States and without regard to any census or enumeration," be ratified.

Was taken up for immediate consideration, read by the Clerk, and adopted.

On the adoption of the resolution,

The ayes were:

. . . -73.
The noes were: None.
Absent and not voting:
. . . -13.
Ordered, That Mr. Calhoun communicate to the Senate the action of the House of Delegates. (HJ at 247)

Like the Senate, the House violated Article VI, Section 29 in failing to "fully and distinctly read" S. J. R. No. 1, "on three different days." Additionally, neither house is recorded as having engrossed S. J. R. No. 1 in violation of the same provision of the State Constitution.

On the 3rd of February, the Senate received a message from the House informing them that the House had concurred in S. J. R. No. 1. (SJ at 268) S. J. R. No. 1 was found correctly enrolled on the 4th. (SJ at 353) The resolution was then presented to the Governor for approval. It was reported, at the same time, that S. J. R. No. 1 had been signed by the President of the Senate and the Speaker of the House of Delegates. (SJ at 353) The same actions also are reported in the House journal. (HJ at 343) (HJ at 344)

On February 14th and 17th, several attempts were made to get the House to take up consideration of H. J. R. No. 1, all of which were unsuccessful. (HJ at 575) (HJ at 616) The question is why those attempts were made.

It is unclear to whom a copy of S. J. R. No. 1 was specifically sent, however, it was not sent directly to William Jennings Bryan, Knox's successor at the Department of State. Knox resigned soon after his proclamation that the Sixteenth Amendment had been ratified. A letter from the person who received West Virginia's transmission, addressed to Bryan, dated April 11th, 1913, was sent on United States Senate stationery, bearing an unidentifiable signature which stated—

> I beg leave to inclose (sic) herewith resolutions (sic) of the legislature of West Virginia ratifying the income tax amendment. As this amendment has already been ratified by thirty six States, I take it that this paper can now serve no useful purpose, but it was sent to me and I received it just today. I had always supposed that West Virginia had been in time to get in the official count. Her intentions were good, I know.

At the top of the letter is a list of Senators, none of whom were from West Virginia or could be matched to the signature.

Attached to this letter was a cryptic note which said—

> Dear Mr. Davis:
> As the Senator's letter herewith, appears to be personal, I am submitting this reply instead of a formal acknowledgement.

Along with this memo, a copy of S. J. R. No. 1 was attached. This copy of S. J. R. No. 1 was signed by the Clerk of the West Virginia Senate and by the Clerk of the West Virginia House of Delegates, but it is not signed by either the President of the West Virginia Senate, nor by the Speaker of the West Virginia House of Delegates, neither is there any indication that the original was signed by either of those gentlemen. The text of that copy reads—

> ENGROSSED SENATE JOINT RESOLUTION NO. 1.
> SENATE JOINT RESOLUTION NO. 1.- "To ratify the proposed amend-

ment to the Constitution of the United States providing for laying and collecting taxes on incomes."

Resolved, by the Legislature of West Virginia, a majority of the members of each House agreeing thereto:

That the proposed amendments to the Constitution of the United States as follows:

"The Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States and without regard to any census or enumeration," be ratified.

Adopted by the Senate, January 29, 1913.

(Signed)

Clerk of the Senate.

Adopted by the House of Delegates, January 31, 1913.

(Signed)

Clerk of the House of Delegates.

This is a deficient notice in that there is no certification by either the President of the Senate or by the Speaker of the House of Delegates, nor any indication of such. Further, there is nothing on this document to indicate that S. J. R. No. 1 was ever presented to the Governor. The failure to do so would have constituted a violation of Article VII, Section 14 of the West Virginia State Constitution requiring all such legislation to be presented to the Governor. S. J. R. No. 1 was published in *ACTS OF THE LEGISLATURE OF WEST VIRGINIA* for 1913. There is no indication in that publication that S. J. R. No. 1 was signed properly.

Further, S. J. R. No. 1 contains the following changes from the official Congressional Joint Resolution—

1. the preamble was deleted
2. the designation "Article XVI." was deleted
3. all commas in the original were deleted
4. the ending period was changed to a comma
5. the phrase "be ratified." was appended to the proposed amendment by virtue of the change of the ending period to a comma

All such changes constitute violations of the duty which the West Virginia legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

Finally, S. J. R. No. 1 violated the provisions of Article X, Section 5 of the State Constitution of West Virginia which states—

> The power of taxation of the Legislature shall extend to provisions for the payment of the State debt, and interest thereon, the support of free schools, and the payment of the annual estimated expenses of the State; but whenever any deficiency in the revenue shall exist in any year, it shall, at the regular session thereof held next after the deficiency occurs, levy a tax for the ensuing year, sufficient with the other sources of income, to meet such deficiency, as well as the estimated expenses of such year.

It was not within the power of the West Virginia Legislature to pass any legislation which would provide for taxes for any other purpose than those stated in this section. S. J. R. No. 1 was not within those purposes.

The ratification of the West Virginia Legislature was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. R. No. 1 contained the following changes to that document—

a. the preamble was deleted

b. the designation "Article XVI." was deleted

c. all commas in the original were deleted

d. the ending period was changed to a comma

e. the phrase "be ratified." was appended to the proposed amendment by virtue of the change of the ending period to a comma

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878 in that there is no indication of the signatures of the presiding officers of either house of the West Virginia legislature

3. Violations by both houses of Article VI of the West Virginia State Constitution in their failures to read S. J. R. No. 1 fully and distinctly on three different days or to engross said resolution prior to reading

4. Violation of Article VII, Section 14 of the West Virginia State Constitution in the

failure to present S. J. R. No. 1 to the Governor following its passage in the Legislature

5. Violation of Article X, Section 5 of the West Virginia State Constitution in the passage of tax legislation beyond the power of the legislature to do so.

The status of the ratification of West Virginia was moot, the proclamation of ratification having already been made at the time the Secretary of State was notified of this action of the West Virginia Legislature in April of 1913.

Vermont—February 13th, 1913

At the opening of the Biennial Session of the Legislature of the State of Vermont of 1910, the Governor, John A. Mead, entered the following on the record in the House Journal on October the 12th—

> **To the Speaker of the House of Representatives:**
> SIR:
> I have the honor to transmit herewith to the House of Representatives for the use of the General Assembly, a certified copy of a joint resolution adopted at the first session of the Sixty-first Congress of the United States of America, proposing an amendment to the Constitution of the United States, together with a letter from the Honorable Philander C. Knox, Secretary of State, under date of July 26, 1909, and an address to the members of the Senate and the House of Representatives of the General Court of Massachusetts, under date of January 5, 1910, signed by Gamaliel Bradford.
> JOHN A. MEAD,
> Governor. (HJ at 51)

Shortly thereafter, the Speaker of the House, having received the materials sent by the Department of State to the Governor, laid before the House the letter of transmission from Philander C. Knox, the Secretary of State of the United States, as well as a copy of Section 205 of the Revised Statutes of the United States. (HJ at 52) He then put the certified copy of the Congressional Joint Resolution before the Legislature, and it was duly recorded in the House journal—

> UNITED STATES OF AMERICA.
> DEPARTMENT OF STATE.
> **To all to whom these presents shall come, Greeting:**
> **I Certify** That the copy hereto attached is a true copy of a resolution of Congress, entitled "Joint Resolution Proposing an Amendment to the Constitution of the United States," the original of which is on file in this Department.
> In testimony whereof I, P. C. Knox, the Secretary of State, have hereunto caused the Seal of the Department of State to be affixed, and my name to subscribed by the Chief of the Bureau of Citizenship of the said Department, at the City of Washington, this 27th day of July, 1909.
> (SEAL)
> P. C. KNOX,
> **Secretary of State.**
> By R. W. FLOURNOY, Jr.
> **Chief, Bureau of Citizenship.**
> Sixty-first Congress of the United States of America;
> AT THE FIRST SESSION.

Begun and held at the City of Washington on Monday, the fifteenth day of March, one thousand nine hundred and nine.

JOINT RESOLUTION.

Proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

"Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

J. G. CANNON,
Speaker of the House of Representatives.
J. S. SHERMAN,
Vice-President of the United States and President of the Senate.
Attest:
A. McDOWELL,
Clerk of the House of Representatives.
CHARLES G. BENNETT,
Secretary.
By HENRY H. GILFRY,
Chief Clerk.
I certify that this Joint Resolution originated in the Senate.
CHARLES G. BENNETT,
Secretary.
By HENRY H. GILFRY,
Chief Clerk. (HJ at 53)

Finally, the Speaker put before the House and into the record an address to the members of the Senate and House of Representatives of the General Court of Massachusetts, dated January 5th, 1910, signed by Gamaliel Bradford, which read as follows—

To Members of the Senate and House of Representatives of the General Court of Massachusetts:

GENTLEMEN: One of the first and most important measures to come before your honorable body is the proposed amendment to the federal constitution in favor of a federal income tax. Your attention is respectfully invited to the following considerations:

Article I, Section 8, of the Constitution of the United States says, "The Congress shall have power to lay and collect taxes, duties, imposts and excises, but the last three shall be uniform throughout the United States."

Excise is defined by Worcester as "an English inland tax levied upon various commodities of home consumption."

Section 9 says, "No capitation or other direct tax shall be laid unless in proportion to the census heretofore directed to be taken."

In accordance with the Section 9 an income tax has been pronounced by the Supreme Court to be unconstitutional, and an amendment removing this obstacle has been passed by Congress, requiring approval by three-fourths of the states. It is argued that an income tax was imposed and collected during the civil war. But in that life and death struggle the whole constitution was for a time in abeyance. The case was well stated by Mr. Lincoln in private conversation.

"The South has violated the constitution to destroy the Union. **I am ready to violate it to preserve the Union.** And between you and me, Chase, before we get through, the Constitution is going to have a tough time."

The beneficent close of the civil war marked the restorations not only of the Union but of the constitution. Serious encroachments have, however, since been made upon it, and **nothing but the most jealous care can save us from embarking on an unknown sea of troubles.** All that makes us a nation instead of forty-six independent and jarring sovereignties is that little instrument which Mr. Bryce says can be read aloud in twenty minutes. It is that alone, on the other hand, which prevents the states from becoming mere dependent provinces and falling under a centralized military power at Washington.

Section 8, above referred to, seems to furnish ample resources for any reasonable expenditure by the federal government. If not, it has the further power to borrow money on the credit of the United States. If we are driven to it by the necessities of war, we can again submit to an unconstitutional income tax, as we did before, subject to its discontinuance when the crisis has passed. A good many persons look with favor on an income tax as a means of reforming the tariff. But no promise or pledge of any such result is attached to it. If there were, the argument against the tax would lose nothing, but as it is, it would be a simple addition to uncontrolled expenditure. The two things are independent of each other and should be kept so.

The welfare of the nation, as well of the household and individual, depends upon the conduct of its finance, and reckless extravagance is a characteristic of the time. The appropriations by Congress, which in 1883-4 were 430 millions, advanced in 1907-8 to 1180 millions. In time of profound peace and without any visible antagonist to provide against, we are competing with England and Germany in naval and military preparation. Back of these is the Panama canal with estimates already reaching 400 millions with an outlook to 500, and swarming in the background are forestry, waterways and all sorts of interstate inspection. **It is said the tax will be used only in an emergency. But what is emergency and what guarantee is there of waiting for that?** The tax begins with one percent on net income, but in a case of "emergency" it would be easy to raise it to **10, 15 or 20 percent.**

It is to be remembered also that the state would be parting with her own resources, as her whole property tax is practically upon income. **The English law exempts incomes under $15,000** and on those above imposes a graded tax of 10 to 14 percent. At the average rate of $17 per thousand of property in this state our tax is equivalent to 30 to 40 percent of the average income from property. **If we voluntarily give over to the federal government a precedence in the right of taking whatever it pleases, what protection is left for our own citizens to enable them to support the increasing demands of their own state?**

A bill has also passed Congress authorizing a federal tax on corporations. This is also in the nature of an income tax and must without doubt meet the same fate at the hands of the Supreme Court. If the amendment passes every corporation in the country will be dealt with without regard to the states and will exist only at the pleasure of the federal government.

The passage of this amendment will mean the practical abolition of the Constitution of the United States, Whoever rules the purse rules the people all over the world. The restrictions were meant for the safeguard of the states which are now asked voluntarily to abandon them. Massachusetts stands in the forefront of our history in resistance to arbitrary external taxation. Will she now set an example to the other states by promptly and decisively rejecting such a demand?

GAMALIEL BRADFORD.

Boston, January 5, 1910. (HJ at 54) (emphasis added)

All of the documents submitted by the Speaker were read and referred to the committee on Federal Relations. (HJ at 56) By the inclusion of Gamaliel Bradford's address in his transmission of the Congressional Joint Resolution, the Governor made a strong statement as to his preferences, probably best summed up in Bradford's emphatic closing declaration: "The passage of this amendment will mean the practical abolition of the Constitution of the United States, Whoever rules the purse rules the people all over the world."

On October 26th, 1910, the following resolution was introduced for the first time in the House by Mr. Calderwood—

> WHEREAS, The Congress of the United States pursuant to Article V of the Constitution of the United States, has proposed to amend the said constitution by adding thereto the following, viz.:
>
> "Article XVI. The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."
>
> Therefore,
>
> **Resolved by the Senate and House of Representatives:** That the said proposed amendment be, and the same hereby is referred to a joint committee consisting of the standing committees on Federal relations of both the Senate and House of Representatives to consider and report to their respective Houses such action thereon as they shall judge proper.
>
> Which was read and adopted on the part of the House.
>
> On motion of Mr. Howard of Whiting, the House adjourned. (HJ at 107)

This resolution merely called for the referral of the proposed amendment to a joint committee. On the 27th of October, in spite of absolutely no reference in the Senate journal to this resolution, the following is recorded in the House journal—

> A message was received from the Senate by Mr. Page their Assistant Secretary, as follows:
>
> MR. SPEAKER:
>
> I am directed to inform the House that the Senate have considered joint resolutions from the House of the following titles:
>
> * * *
>
> Joint resolution relating to the proposed amendment to the Constitution of the United States;
>
> And have adopted the same in concurrence. (HJ at 112)

On the following day, in spite of no further reference to this resolution in the House journal to that point, the following is recorded—

> A message was received from His Excellency, the Governor, by Mr. Kingsley, Secretary of Civil and Military Affairs, as follows:
>
> MR. SPEAKER:
>
> I am directed by the Governor to inform the House that on the 28th day of October he approved and signed
>
> Joint resolutions originating in the House as follows:
>
> * * *
>
> Joint Resolution 40 relating to the proposed amendment to the Constitution

of the United States. (HJ at 119)

A month and a half later, on December 13th, the joint committee referenced in Mr. Calderwood's resolution made the following report—

> PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.
>
> The joint committee consisting of the standing committees on federal relations of both the Senate and House of Representatives, to whom was referred the proposed amendment to the Constitution of the United States, submitted the following report, with accompanying joint resolution:
>
> **To the House of Representatives:** The joint committee consisting of the standing committees on federal relations of both the Senate and House of Representatives, to whom was referred the proposed amendment to the Constitution of the United States, respectfully submit that they have considered the same and report the accompanying joint resolution, and recommend that it be not adopted on the part of the House of Representatives.
>
> Signed HARRY DANIELS,
> Chairman of the Senate Committee.
> S. B. BATES,
> Chairman of the House Committee.
>
> WHEREAS, the sixty-first Congress of the United States at the first session thereof begun and held on Monday, the fifteenth day of March A. D. 1909 by joint resolution proposed to the legislatures of the several states an amendment to the Constitution of the United States, in the words following, viz.:
>
> ARTICLE XVI.
>
> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration; therefore,
>
> **Resolved by the Senate and the House of Representatives:** That the said proposed amendment be and the same is hereby is ratified by the legislature of the state of Vermont.
>
> And the question being, Will the House adopt the joint resolution reported by the committee? On motion of Mr. Bates of Derby, the joint resolution was ordered to lie and be made a special order for Wednesday afternoon next at two o'clock and fifteen minutes;
>
> On motion of Mr. Corry of Montpelier, the House adjourned. (HJ at 383)

There is no record in the House journal indicating where the resolution contained in the foregoing unfavorable report originated. The next day, this undesignated resolution of unknown origin was taken up in the following manner—

> Joint resolution, entitled
> Joint resolution ratifying amendment to the Constitution of the United States;
> Was taken up as a special order, and the question being, Will the House adopt the resolution on its part? On motion of Mr. Peck of Burlington, the joint resolution was ordered to lie.
>
> On motion of Mr. Fletcher of Cavendish, the House adjourned. (HJ at 392)

The next year, on the 12th of January, 1911, consideration of the yet unidentified joint resolution was resurrected and then put off again—

> Mr. Peck of Burlington called up joint resolution, entitled
> Joint resolution ratifying amendment to the Constitution of the United States;
> And the question, recurring, Will the House adopt the joint resolution on its

part? Mr. Peck of Burlington moved that the joint resolution be ordered to lie and be made a special order for Tuesday afternoon next at two o'clock and fifteen minutes;

Which was agreed to.

On motion of Mr. Woodruff of Burke, the House adjourned. (HJ at 519)

On the 17th of January, the unknown resolution was finally brought up for a vote and was rejected—

Joint resolution, entitled

Joint resolution relating to ratification of amendment to the Constitution of the United States;

Was taken up as a special order, and the question being, Will the House adopt the joint resolution on its part,

In was decided in the negative.

Yeas, 45; Nays, 143.

The results of the roll call vote were, then, duly recorded. (HJ at 563)

Further consideration of the proposed Sixteenth Amendment lay dormant for almost two years. On November 8th, 1912, in the next Biennial Session, the Senate journal shows the following adoption of a joint resolution from the House, even though there is no reference in the House journal for that session, to this resolution—

The following joint resolutions from the House were severally read and adopted in concurrence:

* * *

WHEREAS, The Congress of the United States, pursuant to Article V of the Constitution of the United States has proposed to amend the said constitution by adding thereto the following, viz.:

"Article XVI. The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." Therefore,

Resolved by the Senate and the House of Representatives: That the said proposed amendment be, and the same hereby is referred to a joint committee consisting of the standing committees on federal relations of both the Senate and the House of Representatives to consider and report to their respective houses such action thereon as they judge proper.

The President directed that the matter relating to the proposal of amendment to the Constitution of the United States be referred to a joint special committee consisting of the standing committees on federal relations of both Houses in accordance with the vote of the Senate as expressed in the last joint resolution above recited. (SJ at 149)

This resolution proposed only to urge the consideration of the amendment.

On the 18th of November, the Senate Journal shows the following was recorded—

The Governor has informed the House . . .

* * *

That on the 12th day of November, he approved and signed joint resolution originating in the House of the following title, to wit:

Joint resolution relating to the proposed amendment of the Constitution of the United States concerning income tax. (SJ at 192)

This resolution was published in the *Acts and Resolves of the State of Vermont,* Twenty-second Biennial Session of 1912, indicated as having been approved November 12th, 1912, by a brand new Governor—

No. 516.-JOINT RESOLUTION RELATING TO THE PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES CONCERNING INCOME TAX.

WHEREAS, The Congress of the United States, pursuant to Article V of the Constitution of the United States has proposed to amend the said constitution by adding thereto the following, viz.:

"Article XVI. The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." Therefore,

Resolved by the Senate and the House of Representatives: That the said proposed amendment be, and the same hereby is referred to a joint committee consisting of the standing committees on Federal Relations of both the senate and the house of representatives to consider and report to their respective houses such action thereon as they judge proper.

FRANK E. HOWE,
President of the Senate.
CHARLES A. PLUMLEY,
Speaker of the House of Representatives.
Approved November 12, 1912.
ALLEN M. FLETCHER,
Governor.

It is not recorded on the journal what happened as a result of the passage of this resolution, however, Vermont claims that it ratified on February 13th, 1913.

The resolution which showed up unsigned in Washington, D.C. on March 7th, 1913 as having ratified the Sixteenth Amendment read as follows—

Joint Resolution Respecting Amendment to the Constitution of the United States Relating to Incomes.

Resolution

Respecting ratification of amendment to the Constitution of the United States

Whereas, the sixty-first Congress of the United States at the first session thereof begun and held on Monday, the fifteenth day of March A. D. 1909 by joint resolution proposed to the legislatures of the several states an amendment to the Constitution of the United States, in the words following, viz:

Article XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration; therefore,

Resolved by the Senate and House of Representatives:

That the said proposed amendment to the Constitution of the United States be and the same is hereby ratified by the legislature of the State of Vermont.

Frank E. Howe
President of the Senate
Charles A. Plumley
Speaker of the House of Representatives

The certificate from the Secretary of State of Vermont, Guy W. Bailey, indicated that the above joint resolution was—

. . . a true copy . . . as appears by the files and records of this office.

It isn't clear, however, what it was a true copy of. Another joint resolution appears in the *Acts and Resolves of the State of Vermont*, Twenty-second Biennial Session of 1912, and the title of that joint resolution bears resemblance to the title of the copy transmitted to the Department of State, however, there is no journal reference to the following resolution until February 5th, 1913—

> No. 517.-JOINT RESOLUTION RESPECTING AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATING TO INCOMES.
>
> RESOLUTION.
>
> Respecting ratification of amendment to the Constitution of the United States.
>
> WHEREAS, The sixty-first Congress of the United States at the first session thereof begun and held on Monday, the fifteenth day of March A. D. 1909 by joint resolution proposed to the legislature of the several states an amendment to the constitution of the United States, in the words following, viz.:
>
> ARTICLE XVI.
>
> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration; therefore,
>
> **Resolved by the Senate and the House of Representatives:** That the said proposed amendment be and the same hereby is ratified by the legislature of the state of Vermont.
>
> FRANK E. HOWE,
> President of the Senate.
> CHARLES A. PLUMLEY,
> Speaker of the House of Representatives.

On the 5th of February, 1913, the following message was received by the Senate supposedly from the House, though there are no corroborating House journal entries—

> They have adopted on their part joint resolution originating in the House, of the following title:
>
> Joint resolution respecting amendment to the Constitution of the United States relating to incomes;
>
> In the adoption of which the concurrence of the Senate is requested. (SJ at 654)

Later that same day, under a semblance of Constitutional procedure, the House joint resolution referred to above was read before the Senate—

> Joint resolution from the House as follows:
>
> WHEREAS, The sixty-first Congress of the United States at the first session thereof begun and held on Monday, the fifteenth day of March A. D. 1909 by joint resolution proposed to the legislature of the several states an amendment to the constitution of the United States, in the words following, viz:
>
> ARTICLE XVI.
>
> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration; therefore,
>
> **Resolved by the Senate and the House of Representatives:** That the said proposed amendment be and the same hereby is ratified by the Legislature of the State of Vermont;
>
> Was read the first and second times and referred to the committee on federal relations. (SJ at 656)

On the 18th of February, 1913, the following was had in the Senate—

> Mr. Dale, from the committee on federal relations, to whom had been referred joint resolution, entitled
>
> Joint resolution relating to the amendment of the Constitution of the United States relating to incomes;
>
> Reported in favor of the adoption of the joint resolution on the part of the Senate;
>
> And the question being,
>
> Shall the joint resolution be adopted on the part of the Senate?
>
> It was decided in the affirmative;
>
> Yeas, 13. Nays, 11.

The votes on the roll call were then recorded. (SJ at 823) The title of this joint resolution as recorded make it unclear whether the Senate vote on this joint resolution was on "No. 517.-JOINT RESOLUTION RESPECTING AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATING TO INCOMES," or on "No. 518.-JOINT RESOLUTION RELATING TO THE INCOME TAX." In any case, it was not ratified by the required two-thirds majority. On February 19th, 1913, a different version of a joint resolution proposing ratification of the Sixteenth Amendment was introduced in the House—

> Mr. Watson of St. Albans City offered the following joint resolution:
>
> **Resolved by the Senate and the House of Representatives;** That the Secretary of State be and he hereby is directed to notify the Department of State of the United States that the State of Vermont by appropriate legislative action has adopted the following resolution relating to an amendment to the constitution of the United States providing that the United States shall have power to lay and collect taxes on incomes;
>
> "WHEREAS, the sixty-first Congress of the United States at the first session thereof begun and held on Monday, the fifteenth day of March A. D. 1909 by joint resolution proposed to the legislators of the several states an amendment to the Constitution of the United States, in the words following, viz.:
>
> ARTICLE XVI.
>
> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration; therefore,
>
> **Resolved by the Senate and the House of Representatives:** That the said proposed amendment be and the same is hereby is ratified by the legislature of the state of Vermont."
>
> Which was read and adopted on the part of the House. (HJ at 1019)

The vote on the adoption of this resolution was, as is evident from the journal, not recorded. This inadequacy was also indicated in Senate Document No. 240 of the 71st Congress. (See Appendix)

On the 20th, a message was received from the Senate, informing the House that the Senate had concurred in a resolution upon which the House had not yet had a vote.

On February 21st, 1913, the following was recorded in the House journal—

> A message was received from His Excellency, the Governor, by Mr. Graham, Secretary of Civil and Military Affairs, as follows:
>
> MR. SPEAKER:
>
> I am directed by the Governor to inform the House that on the 20th day of

February he approved and signed bills and joint resolutions originating in the House of the following titles, to wit:

* * *

Joint resolution relating to the income tax . . . (HJ at 1087)

This joint resolution, which is claimed as being the one which the Governor signed, is neither the one approved November 12th, 1912, nor the one passed by the Senate on February 18th, 1913, nor the one adopted by the House on February 19th, 1913, nor the one which was received in Washington on March 7th, 1913. This joint resolution is, by title, the third joint resolution published in the *Acts and Resolves of the State of Vermont*, Twenty-second Biennial Session of 1912—

No. 518.-JOINT RESOLUTION RELATING TO THE INCOME TAX.

Resolved by the Senate and the House of Representatives: That the secretary of state be and he is hereby directed to notify the department of state of the United States that the state of Vermont by appropriate legislative action has adopted the following resolution relating to an amendment to the Constitution of the United States providing that the United States shall have power to lay and collect taxes on incomes.

WHEREAS, The sixty-first Congress of the United States at the first session thereof begun and held on Monday, the fifteenth day of March A. D. 1909 by joint resolution proposed to the legislature of the several states an amendment to the Constitution of the United States, in the words following, viz.:

ARTICLE XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration; therefore

Resolved by the Senate and House of Representatives: That the said proposed amendment to the Constitution of the United States be and the same is hereby ratified by the legislature of the state of Vermont.

CHARLES A. PLUMLEY,
Speaker of the House of Representatives.
FRANK E. HOWE,
President of the Senate.
Approved February 20, 1913.
ALLEN M. FLETCHER, Governor.

On March 7th, 1913, an unsigned document arrived in Washington, D. C. at the Department of State containing the following text—

Joint Resolution Respecting Amendment to the Constitution of the United States Relating to Incomes.

Resolution

Respecting ratification of amendment to the Constitution of the United States

Whereas, the sixty-first Congress of the United States at the first session thereof begun and held on Monday, the fifteenth day of March A. D. 1909 by joint resolution proposed to the legislatures of the several states an amendment to the Constitution of the United States, in the words following, viz:

Article XVl (sic)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration; therefore,

Resolved by the Senate and House of Representatives:

That the said proposed amendment to the Constitution of the United States be and the same is hereby ratified by the legislature of the State of Vermont.
Frank E. Howe
President of the Senate
Charles A. Plumley
Speaker of the House of Representatives

Accompanying this document was a certificate from the Secretary of State of Vermont, Guy W. Bailey, dated March 4th, 1913. According to this certificate the accompanying resolution was—

Adopted on the part of the Senate February 18, 1913 and adopted on the part of the House February 19, 1913.

This was a very tangled web woven by the Vermont legislators. The resolution adopted in the Senate on February 18th, 1913 had been recorded in the Senate journal as having been adopted in the House as of February 5th. Using the title of that resolution as recorded in the Senate journal on February 18th and the resolution as recorded in the Senate journal on February 5th, the following discrepancies are evident in the document transmitted to Washington—

1. the title was changed from "Joint resolution relating to the amendment of the Constitution of the United States relating to incomes;" to "Joint Resolution Respecting Amendment to the Constitution of the United States Relating to Incomes." (the title recorded in the Senate journal on February 5th was "Joint resolution respecting amendment to the Constitution of the United States relating to incomes;")
2. the designation "Resolution" and the subheading "Respecting ratification of amendment to the Constitution of the United States" were added
3. the word "WHEREAS" was changed to "Whereas"
4. the word "The" following the word "Whereas" was changed to "the"
5. the word "legislature" was changed to "legislatures"
6. the designation "ARTICLE XVI." was changed to "Article XVI."
7. the word "Legislature" was changed to "legislature"

The resolution adopted in the House without a vote on February 19th, 1913 had supposedly already been adopted by the House as of February 5th even though there is absolutely no House journal activity for this resolution prior to the 19th. The discrepancies between that resolution and the one upon which the Senate voted on the 18th were the following—

1. the entire resolve "**Resolved by the Senate and the House of Representatives:** That the secretary of state be and he is hereby directed to notify the department of state of the United States that the state of Vermont by appropriate legislative action has adopted the following resolution relating to an amendment to the Constitution of the United States providing that the United States shall have power to lay and collect taxes on incomes." was included in the House version but not the Senate version
2. the word "legislature" had been "legislators"
3. the word "constitution" had been "Constitution"
4. a period had originally followed the word "viz"
5. the word "Legislature" had been "legislature"
6. the word "State" had been "state"

There are similar discrepancies between the document transmitted to Washington and the resolution supposedly signed by the Governor and recorded in the published session laws as No. 518.

It is evident that the House version of this resolution did not match that of the Senate and neither version matched that which was transmitted to Washington, D. C., nor that which was signed by the Governor. This might be expected from the shuffling of resolutions which occurred between the House and Senate.

In any event, the Legislature of Vermont made the following changes to the official Congressional Joint Resolution in the transmission of the unknown resolution to Washington—

1. the preamble was discarded
2. the designation "Article XVI." was changed to "Article XVI"
3. the word "States" was changed to a common noun
4. the period was changed to a semicolon
5. the resolved was appended to the proposed amendment by virtue of the replacement of the period with a semicolon

Such changes constituted a violation of the duty which the Vermont Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the bill **in the precise form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments**, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord***

with the action taken. (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed amendment to the Supreme Law of the land.

The Legislature of the State of Vermont did not ratify the Sixteenth Amendment proposed by Congress prior to the proclamation of ratification made by Philander Knox. Nor did the Legislature of the State of Vermont ratify after the proclamation by virtue of the following violations—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that the undesignated resolution transmitted to Washington contained the following changes—

a. the original preamble was discarded

b. the designation "Article XVI." was changed to "Article XVI"

c. the word "States" was changed to a common noun

d. the period was changed to a semicolon

e. the resolved was appended to the proposed amendment by virtue of the replacement of the period with a semicolon

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

3. Failure of the House and the Senate and the Governor to properly pass and sign the same joint resolution.

4. Failure by the Senate to pass their joint resolution by a two-thirds majority

5. Failure by the House to record a vote upon their joint resolution

6. Failure by the House to have adopted a resolution when they so claimed as recorded in the Senate journal

Massachusetts—March 4th, 1913

On July 29th, 1909, Eben S. Draper, the Governor of Massachusetts, sent a letter to Philander Knox, Secretary of State of the United States, in which the Governor acknowledged receipt of the certified copy of United States Senate Joint Resolution No. 40—

> I have the honor to acknowledge the receipt of a certified copy of the resolution of Congress . . . The legislature of this Commonwealth is not now in session but will begin its next sitting on the first Wednesday in January, 1910, at which time the resolution will be submitted for action, and a certified copy of the result will be communicated to the Secretary of State as requested.

At the next session of the General Court (the Massachusetts legislature), Governor Draper submitted the Congressional Joint Resolution on January 11th, 1910. (HJ-10 at 45) Two days later, the documents submitted were referred to the committee on Federal Relations. (SJ-10 at 57) On February 24th, the committee on Federal Relations was authorized to spend up to two hundred dollars to prepare a report of the evidence offered at the hearings before that committee on the proposed income tax. (SJ-10 at 356)

On May 5th, the committee reach a decision and made the following report—

> Of the committee on Federal Relations, no legislation necessary, on the message from the Governor transmitting a certified copy of a resolution of Congress proposing an amendment the Constitution of the United States authorizing Congress to lay and collect taxes on incomes (House, No. 144) (Messrs. Robinson, Michael F. O'Brien and Arseneault, of the House, dissenting); . . . (SJ-10 at 867)

On May 6th, consideration of this report was postponed until the next Thursday. (SJ at 883) When this report came up for consideration again, it was postponed again - this time for a week. (SJ-10 at 916)

At the end of another week, the House report came up for consideration again, with the following result—

> The House Report of the committee on Federal Relations, no legislation necessary, on the message from the Governor transmitting a certified copy of a resolution of Congress proposing an amendment the Constitution of the United States authorizing Congress to lay and collect taxes on incomes (House, No. 144),—was considered, the question being on accepting it, in concurrence.
>
> Mr. Meaney moved that the report be amended by substituting "Resolutions ratifying the proposed amendment of the Constitution of the United States relative to the taxation of incomes" (printed as House, No. 1603).
>
> The same Senator moved that the further consideration of the report be

postponed until the following Monday; and this motion was negatived.

The question on adopting the amendment moved by Mr. Meaney was determined as follows, to wit:—

YEAS.

* * *

-11.

NAYS.

* * *

-23.

PAIRED.

* * *

-2.

ABSENT OR NOT VOTING.

-1.

So the amendment was rejected.

The report was then accepted, in concurrence. (SJ-10 at 951)

No further action was taken in the session of 1910 on any resolution in ratification of the proposed Sixteenth Amendment.

The following year, ratification of the proposed Sixteenth Amendment was urged upon the legislators of Massachusetts by the new Governor, Eugene N. Foss, in his address. On January 12th, 1911, that part of the address was referred once again to the committee on Federal Relations. (SJ-11 at 58) Four days later, a petition from the House of Representatives with a resolve "for a ratification of the amendment of the Constitution of the United States authorizing Congress to lay and collect taxes on incomes" was introduced in the Senate on a petition of the Secretary of State, Frank J. Donohue, and, then, referred to the committee on Federal Relations. (SJ-11 at 85)

On April 21st, the resolve of Mr. Donohue was read and placed in the Orders of the Day for the 24th over the dissent of two of the Senators and two of the Representatives on the committee. (SJ-11 at 901) On the 24th, those resolutions were taken up for consideration—

> The House Resolutions ratifying the proposed amendment to the Constitution of the United States relative to the taxation of incomes (House, No. 370), were considered, the question being on adopting them, in concurrence.
>
> Mr. Pearson moved that the further consideration of the resolutions be postponed until the following Thursday.
>
> Mr. Malley moved that the further consideration of the resolutions be postponed until Wednesday, May 3.
>
> The question was first put on the latter motion (that motion having precedence, under the rule), and the same was negatived, by a vote of 8 to 14.
>
> The motion of Mr. Pearson prevailed; and, accordingly, the further consideration of the resolutions was postponed until the following Thursday. (SJ-11 at 918)

The next day, the Governor sent the following message to the Senate, strongly urging ratification—

> **To the Honorable Senate:**
>
> I am particularly concerned with the immediate passage of the resolve for the amendment to the Constitution of the United States providing the income tax.
>
> A large income is the sure sign of individual prosperity, while the touch of adversity will destroy or reduce the income beyond the reach of the tax gatherer.

The burdens will fall upon those able to bear them and thus the less fortunate will be relieved.

Massachusetts is a wealthy State and it has been freely said, and a former vote of the Legislature has indicated, that our Commonwealth is willing to hug her riches and refuse to give to the government power to reach it in time of need.

It is also said that our Commonwealth has acquired her vast wealth under tariff laws which have given her and other Eastern States special privileges in industrial development. What can creat more definitely and more justly the impression that we are unwilling to strengthen the general government out of our abundance than our refusal now to approve this right to tax?

The assent of 35 States is required and 30 have already endorsed the amendment. A few weeks may put our Commonwealth into the position of yielding under compulsion. To assent after two-thirds of the States have approved will destroy all the prestige which we should attain were we now to join in creating the necessary number. Should Massachusetts now send forth the message to the Union that she joins eagerly in the passage of the amendment, it is plain that all doubt would be removed.

Our Commonwealth stands among the most honored of the States. Were she now to say this word, all controversy would end and her action would be accepted as the signal to all the States to make the vote unanimous. The question is, therefore, whether she shall not decide the issue favorably or shall be forced to submit, and allow her grudging assent to stand as evidence that she loves her dollars more than she loves the Union which has blessed her with peace, security and abundant property.

EUGENE N. FOSS.

(SJ-11 at 922)

The Governor's irritability had little effect upon the Senate. Two days after his message was received, consideration of House, No. 370, was postponed. (SJ-11 at 954) On May 2nd, it was put on the calendar for the 3rd. (SJ-11 at 978) On the 3rd, House, No. 370, came up a vote with the following result—

The House Resolutions ratifying the proposed amendment to the Constitution of the United States relative to the taxation of incomes (House, No. 370), were considered; and the question on adopting them, in concurrence, was determined as follows, to wit:—

YEAS.

* * *

-10.

NAYS.

* * *

-11.

PAIRED.

* * *

-18.

So the resolutions were rejected. (SJ-11 at 1001)

The next day, on motion to reconsider, the following occurred—

Mr. Malley moved that the vote by which the Senate, at the preceding session, had rejected the House Resolutions ratifying the proposed amendment to the Constitution of the United States relative to the taxation of incomes (House, No. 370),—be reconsidered.

The same Senator moved that the further consideration of the motion to

reconsider be postponed until the following Tuesday; and this motion was negatived.

The question of the motion to reconsider was determined as follows, to wit:

YEAS.

* * *

-17.

NAYS.

* * *

-18.

(SJ-11 at 1003)

Later that day, any possibility that the proposed Sixteenth Amendment would be ratified in Massachusetts in the session of 1911 was extinguished when the Senate accepted the reports of the committee on Federal Relations that no was legislation necessary on that part of the Governor's address relating to a federal income tax. (SJ-11 at 1014)

In the session of 1911, the Senate did pass a bill for a State income tax. (SJ-11 at 1159, 1461, 1476, 1547, 1565, 1570)

In the session of 1912, the proposed Sixteenth Amendment fared no better than in the previous two sessions. Again, on a petition of Frank J. Donohue, the Senate rejected ratification. The vote came up on April 25th, 1912 as follows—

The House Resolutions ratifying the proposed amendment to the Constitution of the United States relative to the taxation of incomes (House, No. 105),— were considered; and the question on adopting them, in concurrence, was determined as follows, to wit:—

YEAS.

* * *

-14.

NAYS.

* * *

-17.

PAIRED.

* * *

-8.

So the resolutions were rejected. (SJ-12 at 1218)

On January 3rd, 1913, the petition of Frank J. Donohue was introduced in the House, again, and referred to the committee on Federal Relations. (HJ-13 at 53)

On January 7th, 1913, Governor Foss, once again, made an appeal to the Senate to ratify the proposed Sixteenth Amendment. The next day, as in every session since 1910, that part of the Governor's address related to ratification of the proposed Sixteenth Amendment was referred to the committee on Federal Relations. (SJ-13 at 53) And, again, the petition of Frank J. Donohue was referred by the Senate to the committee on Federal Relations. (SJ-13 at 59) On the 9th, the House also referred that part of the Governor's address related to ratification to the committee on Federal Relations. (HJ-13 at 110)

By the 20th of February, 1913, the issue of the ratification of the Sixteenth Amendment was thought to be moot since more than three-fourths of the States had purportedly ratified. On that day, the Senate of Massachusetts read the petition of Mr. Donohue and placed it in the Orders of the Day for the next day for the purpose voting upon its

adoption. (SJ-13 at 482) The next day, that resolve was recommitted to the committee on Federal Relations, on motion of Mr. Blanchard. (SJ-13 at 509)

On the 26th of February, the ratification resolve, printed as House, No. 305, was favorably reported out of committee. (SJ-13 at 548) House, No. 305, was then read again and placed in the Orders of the Day for the next day for a vote on adoption.

The next day, the 27th, the following took place in the Senate—

> The Senate Resolutions ratifying the proposed amendment to the Constitution of the United States relative to the taxation of incomes (printed as House, No. 305),—were adopted.
>
> The resolutions were as follows:—
>
> **Whereas,** the sixty-first congress, at the first session, in both houses passed the following proposition to amend the constitution of the United States, by a constitutional majority of two thirds thereof, in words following, to wit:—
>
> **Joint Resolution, proposing an Amendment to the Constitution of the United States.**
>
> Resolved by the senate and house of representatives of the United States of America in congress assembled (two-thirds of each House concurring therein). That the following article is proposed as an amendment to the constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution:
>
> "Article XVI. The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration"; therefore be it
>
> **Resolved,** That the said proposed amendment to the Constitution be, and the same is, hereby ratified by the Legislature of the Commonwealth of Massachusetts.
>
> **Resolved,** That a certified copy of the foregoing preamble and resolution be forwarded by the Governor to the Secretary of State for the United States, in accordance with section two hundred and five of the Revised Statutes of the United States.
>
> Sent down for concurrence. (SJ-13 at 575)

On March 3rd, House, No. 305, was taken up in the House as follows—

> Resolutions ratifying the proposed amendment to the Constitution of the United States relative to the taxation of incomes (printed as House, No. 305) (reported on part of a message from the Governor, Senate, No. 39, and on a petition), adopted by the Senate, were read and placed in the orders of the day for to-morrow. (HJ-13 at 712)

On the next day, the 4th, House, No. 305, was taken up for a vote in the House with the following result—

> The Resolutions ratifying the proposed amendment to the Constitution of the United States relative to the taxation of incomes (printed as House, No. 305) were considered.
>
> After debate, the previous question having been ordered, on motion of Mr. Tufts of Waltham, the resolutions were adopted, in concurrence, as follows:—
>
> **Whereas,** the sixty-first congress, at the first session, in both houses passed the following proposition to amend the constitution of the United States, by a constitutional majority of two thirds thereof, in words following, to wit:—
>
> **Joint Resolution, proposing an Amendment to the Constitution of the United**

States.

Resolved by the senate and house of representatives of the United States of America in congress assembled (two-thirds of each House concurring therein). That the following article is proposed as an amendment to the constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution:

"Article XVI. The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration"; therefore be it

Resolved, That the said proposed amendment to the Constitution be, and the same is, hereby ratified by the Legislature of the Commonwealth of Massachusetts.

Resolved, That a certified copy of the foregoing preamble and resolution be forwarded by the Governor to the Secretary of State for the United States, in accordance with section two hundred and five of the Revised Statutes of the United States. (HJ-13 at 740)

In reading House, No. 305, only twice, the House violated House Rule 51 requiring readings on three different days. Of much greater significance, was the violation of Chapter I, Section III, Article VII of the Massachusetts State Constitution which provided that—

> All money bills shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

This resolve did not originate in the House. It was designated as House, No. 305, but is filed as Senate legislation in the archives, and, of course, it did not first pass the House before its consideration in the Senate. This unconstitutional procedure may have been due to the failure of either house of the General Court to submit this resolve to the Committee on Bills in the Third Reading. The duty of that committee, according to Senate Rule 33 and, similarly, House Rule 52, was "to examine and correct (bills and resolves) for the purpose of avoiding . . . unconstitutional provisions, and of insuring accuracy in the text and references, and consistency with the language of existing statutes."

On March 7th, Governor Foss transmitted to William Jennings Bryan, Knox's successor at the Department of State, a letter and a hand-written resolution—

The Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Thirteen.

Resolutions

Ratifying the Proposed Amendment to the Constitution of the United States relative to the Taxation of Incomes.

Whereas, The sixty-first congress, at the first session, in both houses passed the following proposal to amend the constitution of the United States, by a constitutional majority of two thirds thereof, in words following, to wit:—

Joint Resolution, proposing an Amendment to the Constitution of the United States.

Resolved by the senate and house of representatives of the United States of America in congress assembled (two-thirds of each House concurring therein). That the following article is proposed as an amendment to the constitution of the United States; which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the

constitution:

"Article XVI. The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration"; therefore be it

Resolved, That the said proposed amendment to the constitution be, and the same is, hereby ratified by the legislature of the commonwealth of Massachusetts.

Resolved, That a certified copy of the foregoing preamble and resolution be forwarded by the governor to the secretary of state for the United States, in accordance with section two hundred and five of the Revised Statutes of the United States:

In Senate, adopted, February 27, 1913.
In the House of Representatives, adopted, in concurrence,
March 4, 1913.

Office of the Secretary.
A true copy. Boston, March 7, 1913.
Witness the Great Seal of The Commonwealth.
(Signed)
Frank J. Donahue
Secretary of The Commonwealth

In spite of the fact that the members of the Massachusetts General Court had been in possession of the exact wording for four legislative sessions, both the document transmitted to Washington, D. C. and the resolve printed in the journal contained the following changes to the official Congressional Joint Resolution—

1. the preamble was modified
a. all proper nouns, except United States, were changed to common nouns
b. the comma following the parenthetic statement was changed to a period
2. the word "Congress" was changed to a common noun
3. the word "States" was changed to a common noun
4. the period was deleted

Any such change was a violation of the duty which the Massachusetts Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his letter of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the**

House. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)

When the bill has been agreed to in *identical form* by both bodies—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.

The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

Furthermore, the hand-written document transmitted to Washington was only signed by Frank J. Donohue and not signed, nor indicated as signed, by either of the presiding officers of the General Court or by the Governor. No journal entry indicated such signing by either presiding officer or by the Governor.

Finally, there were several changes made to the text of the document transmitted to Washington, D.C. compared to the text appearing in the journals, including the following—

1. the word "proposition" was changed to "proposal"
2. the comma following the second instance of the name "United States" was changed to a semicolon
3. the words "Constitution," "Legislature" and "Commonwealth" in the first State resolve were changed to common nouns
4. the titles "Governor" and "Secretary of State" were changed to common nouns

The purported ratification of the proposed Sixteenth Amendment by the General Court of Massachusetts was invalid for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that House, No. 305, contained the following changes to the official Congressional Joint Resolution—
   a. the preamble was modified
   i. all proper nouns, except United States, were changed to common nouns
   ii. the comma following the parenthetic statement was changed to a period
   b. the word "Congress" was changed to a common noun
   c. the word "States" was changed to a common noun
   d. the period was deleted
2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878
3. Violation of Chapter I, Section III, Article VII of the Massachusetts State Constitution in that House, No. 305 did not originate in the House

New Hampshire—March 7th, 1913

On July 29th, 1909, Henry B. Quinby, Governor of the State of New Hampshire sent a letter of acknowledgement, of the receipt of the certified copy of United States Senate Joint Resolution No. 40, to Philander Knox, the Secretary of State of the United States. In that letter the Governor stated that—

> The resolution will be submitted to the Legislature of New Hampshire when it convenes in January, 1911.

The Legislature, referred to as the General Court, of New Hampshire rejected ratification in that session and, so, the following letter was sent by the next Governor, Robert P. Bass to Knox, dated March 7th, 1911—

> I regret to inform you that the joint resolution "ratifying the sixteenth amendment to the Constitution of the United States of America" has failed of passage at the present session of the New Hampshire General Court. The joint resolution was adopted by the House of Representatives, but the State Senate on Thursday, the second day of March, voted adversely thereon.

In the next session of the General Court, two resolutions were introduced on the 8th of January, 1913 to attempt to ratify the proposed Sixteenth Amendment—

> The following bills and joint resolutions were severally introduced, read a first and second time and referred as follows:
>
> * * *
>
> By Mr. Cowan of Salem, House Joint Resolution No. 1, Joint resolution ratifying the sixteenth amendment to the Constitution of the United States of America. To the Committee on Judiciary. (HJ at 66)
>
> By Mr. Cutter of Jaffrey, House Joint Resolution No. 5, Joint resolution ratifying the sixteenth amendment to the Constitution of the United States of America.
>
> Read a first time. The second reading having commenced, on motion of Mr. Curtis of Concord, the further reading of the joint resolution was dispensed with. The joint resolution was then laid upon the table to be printed and referred to the Committee on Judiciary. (HJ at 68)

On February 12th, H. J. R. No. 1 was reported out of committee as unnecessary to consider because, of the two, H. J. R. No. 5 was the preferred resolution. That report was accepted and adopted. (HJ at 339) On the 20th, H. J. R. No. 5 was favorably reported. That report was also accepted and H. J. R. No. 5 was ordered to a third reading. (HJ at 406) Later that same day, H. J. R. No. 5 was taken up with the following results—

> House Joint Resolution No. 5, Joint resolution ratifying the sixteenth

amendment to the Constitution of the United States of America.

. . . read a third time and passed and sent to the Senate for concurrence. (HJ at 430)

On February 25th, the Senate received a message from the House informing the Senate of the action taken on H. J. R. No. 5, five days previous, and requesting concurrence. (SJ at 129) Shortly thereafter, the rules were suspended and H. J. R. No. 5 was read a first and second time by title and referred to the Committee on the Judiciary. (SJ at 129)

On March 6th, H. J. R. No. 5 was favorably reported out of committee. The report being accepted, H. J. R. No. 5 was ordered to a third reading that afternoon. (SJ at 173) That afternoon, H. J. R. No. 5 was taken up with the following result—

> The following entitled House Joint Resolution No. 5, Joint resolution ratifying the sixteenth amendment to the Constitution of the United States of America, was read a third time and passed. (SJ at 176)

H. J. R. No. 5 was found correctly engrossed in its final draft on March 13th. (HJ at 644) (SJ at 192)

On March 25th, Edward N. Pearson, the Secretary of State of New Hampshire, sent a letter of transmittal to Knox. Accompanying the letter was a certificate from Pearson, dated March 18th, 1913, signed and under seal, which stated—

> I, Edward N. Pearson, Secretary of State of the State of New Hampshire, do hereby certify that the following and hereto attached is a true copy of Joint Resolution entitled: ——
>
> Joint Resolution ratifying the Sixteenth Amendment to the Constitution of the United States of America
>
> (approved March 14, 1913), as engrossed in this office and in my office of Secretary of State.
>
> * * *
>
> (Signed)
> Edward N. Pearson,
> Secretary of State.

On this document, which references an undesignated joint resolution, the important qualifying phrase "the original of which is recorded in this office in" is crossed out. This means that, at best, only a copy of the original resolution was filed in the Secretary of State's office. In fact, the original resolution is not available, nor is any original State document from New Hampshire for the years 1883-1917. According to the rule of best evidence, a copy is not admissible as evidence until an accounting is made for the original. Since no such accounting of the original was made even in the year the preceding certificate was prepared and no such accounting may be made now, the copy transmitted to Washington is a nullity.

Though the New Hampshire journals show a resolution designated H. J. R. No. 5 passing the Senate and House of Representatives, the text of that resolution never appeared in the journals. A copy of the following undesignated resolution was transmitted to Washington along with Secretary of State Pearson's letter and certificate—

> In the year of our Lord one thousand nine hundred and thirteen.
>
> Joint Resolution ratifying the Sixteenth Amendment to the Constitution of

the United States of America.

Resolved the Senate and House of Representatives in General Court convened:

Whereas, both houses of the Sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to wit:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each house concurring therein) that the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislature of three-fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution, namely, article XVI.

"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."

Now, therefore,

Be it resolved by the Senate and House of Representatives in General Court convened, that the said proposed amendment to the Constitution of the United States of America be, and the same is hereby, ratified by the General Court of the said State of New Hampshire. And further be it resolved that certified copies of this Joint Resolution be forwarded to the Governor of this state, to the Secretary of State of the said United States, and to the presiding officers of the Senate and House of Representatives of the said United States.

William J. Britton,
Speaker of the House of Representatives.
Enos K. Sawyer,
President of the Senate.
Approved March 14th, 1913.
Samuel D. Felker,
Governor.

If it is to be assumed that the preceding was H. J. R. No. 5, it is not indicated either on this copy of the resolution nor in the certificate of the Secretary of State nor in his letter of transmittal nor in the journals whether H. J. R. No. 5 was signed by any of the gentlemen whose names are merely printed on this document. However, there is no indication either on this copy of the resolution nor in the certificate of the Secretary of State nor in his letter of transmittal nor in the journals whether this is an accurate representation of H. J. R. No. 5. Therefore, it cannot be said that the above represents H. J. R. No. 5.

While the journals are silent about the text or the signing of H. J. R. No. 5, in what they do say about H. J. R. No. 5, they disagree substantially with United States Senate Document No. 240 of the 71st Congress, (See Appendix) which shows that although there was no record vote in the New Hampshire House on a ratification resolution, that there was a record vote in the New Hampshire Senate on a ratification resolution and that vote was recorded as 20, Yeas, to 2, Nays, on February 19th, 1913. The date of passage in the House is shown as February 18th, 1913. This information is purported to be from the New Hampshire journals. Those journals do not currently report the events in that manner.

The vote in the House was not a record vote, a euphemism for the lack of a recorded vote, according to the currently available New Hampshire House journal and according to the version relied upon in the preparation of Senate Document No. 240. According to

the currently available House journal, however, that "vote" occurred on February 20th, 1913, not February 18th as reported in the version of the House journal relied upon in Senate Document No..240.

According to the currently available Senate journal, the "vote" in the Senate occurred on March the 6th of 1913 and was also not a "record vote" in contradiction to the information supplied by Senate Document No. 240.

If the journals relied upon in preparation of Senate Document No. 240 are correct then the currently available journals are incorrect, and vice versa. In either case, there is no substantial record verifying that the document sent to Washington, D.C. was, in fact, H. J. R. No. 5 or that it ever passed the New Hampshire General Court or that it was ever signed.

Finally, the text of the resolution in the document sent to Washington contains the following changes to the official Congressional Joint Resolution—

1. the preamble was modified—

a. a comma was inserted following the word "assembled"

b. the second instance of the word "House" was changed to "house"

c. the comma following the phrase in parentheses was deleted

d. the word "That" was changed to "that"

e. the word "legislatures" was changed to "legislature"

f. the word "States" was changed to a common noun

g. the colon following the second instance of the word "Constitution" was deleted

h. the word "namely" and a trailing comma were added following the second instance of the word "Constitution"

i. the designation "article XVI." was added to the preamble

2. the designation "Article XVI." was changed to "article XVI." and deleted from the proposed amendment

3. the word "States" was changed to a common noun

These changes were impermissible and a violation of the duty which the New Hampshire legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the**

House. Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House**. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)

When the bill has been agreed to in *identical form* by both bodies—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.

The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken***. (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

The purported ratification of the proposed Sixteenth Amendment by the State of New Hampshire was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that the resolution transmitted to Washington contained the following changes to the Congressional Joint Resolution—

a. the preamble was modified—

i. a comma was inserted following the word "assembled"

ii. the second instance of the word "House" was changed to "house"

iii. the comma following the phrase in parentheses was deleted

iv. the word "That" was changed to "that"

v. the word "legislatures" was changed to "legislature"

vi. the word "States" was changed to a common noun

vii. the colon following the second instance of the word "Constitution" was deleted

viii. the word "namely" and a trailing comma were added following the second instance of the word "Constitution"

ix. the designation "article XVI." was added to the preamble

b. the designation "Article XVI." was changed to "article XVI." and deleted from the proposed amendment

c. the word "States" was changed to a common noun

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878 in that the document transmitted to Washington was a copy without an original, was not signed and could not be proven to be so, and, finally, was not designated H. J. R. No. 5 and cannot be proven to be H. J. R. No. 5, and, therefore, cannot be proven to have passed the New Hampshire General Court

Closing

The journey through the forty-eight contiguous States, visiting the capital of each, researching the process of ratification in each and discovering the enormous fraud that the Sixteenth Amendment represents, was a long journey. It was a journey that was possible only because of the advance of technology and God. The cost in terms of time and expense, to say nothing of the loneliness and of the many periods of frustration over the lack of funds to continue the journey, was quite significant. The cost, on all of those accounts, would have been insurmountable for anyone, save only for the wealthiest individual, at the time of the purported ratification of the Sixteenth Amendment. In 1913, there were, of course, no commercial airlines with jets capable of taking you anywhere in the country in a few hours, no automobiles capable of comfortable, high-speed travel, no xerographic copiers capable of reproducing any document in seconds. More important than any of those, perhaps, there was no widespread perception that our government was capable of such incredible shenanigans. In fact, there was, instead, a wide-eyed perception that our government was much to be trusted and, therefore, in no need of the constant vigilance which the founding fathers of this nation warned succeeding generations to maintain.

That perception was so very far from accurate.

When this project was first begun, it seemed like a great tree to be cut down, and I, seemingly armed only with the barest of tools, whittled at it as with a pocket knife, small chips falling at its trunk. You have read the result.

The first two States that were visited, Pennsylvania and Connecticut, had both rejected the Sixteenth Amendment and did not recant their rejection. Maine was next. The recorded debates were ferocious in that State. Those in favor of a federal income tax felt that such a tax would level the great fortunes and get at the very wealthy. A commonly held belief back then, it has been proven to be fundamentally incorrect, as was ably predicted by one of those Maine debaters. The Legislature of the State of Maine went on to create a chaotic legislative situation, which was rumored to be an intentional joke by many of those in and around the halls of the Capitol. Where there's smoke, etc.

A short trip down the coast was Massachusetts and its historic capital, Boston. Another incredible series of debates and speeches which required several days to find and read. It was well understood by virtually everyone in the nation that the Sixteenth Amendment would be used, sooner or later, to lay and collect the taxes on incomes. There was no mystery to that. In one of Governor Eugene N. Foss' many addresses to the Massachusetts General Court exhorting them to do their patriotic duty in ratifying the proposed Sixteenth Amendment, he stated that "a federal tax on incomes is certain." Governor Foss knowingly advocated the laying of a tax on the people of Massachusetts

in urging the ratification of the Amendment. It was repeatedly advised by Sixteenth Amendment advocates that income taxation would not be used except in time of war, or in case of dire national emergency. However, in an address to the Legislature by former Massachusetts State Representative, James J. Myers, he stated that "this amendment does **much more** than provide for an emergency. It goes far beyond that and provides that Congress may levy such a tax without any such need and at any time . . . let us not in the desire to confer on Congress a power which it may at some time in the distant future become necessary for it to exercise in time of emergency, confer on it a power far broader than the case calls for and one fraught with the very dangers against which the framers of our Constitution took such pains to guard themselves and those to come after them." One excellent anti-Amendment speech by one of the then current legislators in Massachusetts, Gamaliel Bradford, was submitted by the Governor of Vermont, along with his certified copy of the Congressional Joint Resolution from Philander Knox, to the Vermont Legislature. The Massachusetts General Court, after having positively rejected the Amendment three times, was represented as having ratified on the fourth attempt. This attempt was begun in earnest only after it already was too late, the proclamation of ratification already having been made. Yet, even with the pressure off, the process in Massachusetts was fatally flawed.

The attempt to ratify was quite a long, drawn-out process in New York, taking six months to complete. The New York Legislature, at the time of the introduction of the ratification resolution which was claimed to have passed, voted to abide by a rule which required them to procedurally treat any proposal to amend the United States Constitution as any other legislation passed into law would be treated, but, the New York legislators chose to disregard what they had agreed to do relative such amendments.

New Hampshire held out as the very last State to have supposedly ratified. In its first pass through the New Hampshire General Court, the Sixteenth Amendment was positively rejected, Governor Bass sending his regrets to Knox. In a second pass, the Amendment was reported ratified, but, no one could vouch for an original document of ratification then, and no one can vouch for one now since over thirty years worth of documents, including those of the year of the purported ratification, are missing in New Hampshire. Furthermore, the journals in New Hampshire seem to have undergone a curious metamorphoses, dates and events having changed from the way that they were recorded in 1931 in a United States Senate report on several amendments, including the Sixteenth.

After having been to four of the New England States which had reported ratifying, I found myself wondering if I had hit upon an anomaly—so far, none had properly ratified. Perhaps in the next State, Vermont, it would be found that the Legislature had properly ratified.

Vermont, as it turned out, was no different. They found a different way to fail to ratify, but, they did fail to ratify. Another of the three New England States which ratified too late to be in the official count, Vermont, like New Hampshire, at first rejected the amendment. In the session of 1913, the Vermont Legislature played the old shell game. The trick was to figure out under which resolution shell the ratification pea was under. But somebody ate the pea in Vermont and pulled a ratification-resolution-out-of-the-old-hat trick.

Rhode Island, the littlest State, proved itself able to withstand the intense pressure to

ratify and firmly rejected.

The last State that I visited on this particular leg of the journey was Delaware. The Delaware legislators decided to abridge their journals to cover up what they had done relative to Sixteenth Amendment legislation. The re-writers of history in the Delaware Senate were like small children. After disassembling the parts to their story, they forgot to put them all back, except for the part about how they were so good about ratifying.

Returning home from this first of many forays into a little known part of the world, the State archives, I remember feeling as though someone had thrown their high, hard fastball in at my chin. I had been taken by surprise and sent sprawling. Fully expecting to be six-for-six, in terms of reading about successful ratifications, the box score said oh-for-six, instead.

The next portion of the journey began in Atlanta with the South's answer to the Marx Brothers, the Georgia Legislature. The Georgia legislators played fast and loose, not only with Federal and State Constitutional provisions, but with the rules of the English language and legislative rules of the universe as well. Entertaining, almost beyond belief. I had the notion that it would be tough to outdo the Georgia State Legislature. Then came Kentucky. The Senators from Bluegrass were either experimenting with some new system of numbers, or throwing odds on the Derby. In their system of numbers, 9 positive votes were greater than 22 negative votes. They didn't have Sesame Street in those days. That might explain that problem. What cannot be explained, or excused, is that the legislative clerks of the Kentucky Legislature tried to cover up this gross fraud by making up "extracts" from the official journals, changing the recorded vote and sending those "extracts" to Washington, D. C. at the request of Philander Knox. Mr. Knox might have been forgiven if he believed that those "extracts" were correct. They were signed by someone claiming to be the Chief Clerk of the Senate of the State ofKentucky. But, then, Philander also had copies of the official, published journals showing the official vote with all the names laid out on roll call as per procedure. Philander should not be forgiven after all.

At this point, I had been to the capitals of eight States whose Legislatures had supposedly ratified the Sixteenth Amendment. And had seen them go 0 for 8. Some had flied out. Some had struck out. One went to the plate without a bat. One hit itself in the head with the bat before the ball was even thrown. Now, I didn't believe, at this point, that it was possible that all of the States could be like these eight, but, I was starting to become more anxious to get to the next State capital to answer the question that had started popping up in my mind—"What next?"

Tennessee was next, Opryland, U. S. A. The legislators of the Volunteer State were somewhat anticlimactic after the crazies in Georgia and Kentucky, nevertheless, Tennessee managed to provide some interesting moments. A novel provision of the Tennessee State Constitution prohibited any action upon legislation in ratification of an amendment to the United States Constitution unless the legislators had been elected after the submission of a proposed amendment to that body. Like the legislators in the previous States, they didn't seem to be inhibited by any Constitutional prohibitions and they went ahead in spite of it. Whatever it was they did, however, can no longer be documented—the original resolution is missing. That's probably just as well, since the Tennessee Senate never did actually vote upon their ratification resolution.

The people of the South have a winning charm and their elected officials have

reputations as consummate politicians able to talk babies, old Studebakers and rattlesnakes out of their rattles. In the case of Mississippi, the snake oil salesmen in the Legislature may have employed one of the two oldest lobbying tools in the world, hard liquor. It may have worked against them. The Mississippi State Legislature failed to ratify anyway.

In the State of Louisiana, their Constitution provided that their Legislature could pass revenue measures for State purposes, but not federal, and they were, thus, prohibited from passing the resolution in ratification of a federal taxing authority. As undaunted as a Cajun retrieving a lost case of hot sauce, the Louisiana legislators went ahead with the effort, but amended the amendment.

The great Lone Star State, Texas, was the next stop. There, it was found that the ratification of the Sixteenth Amendment came up in the midst of a Special Session hurriedly called right in the middle of primary elections, many of which were closely contested. It was thought that a quorum necessary to organize that Special Session might not show up at the State Capitol in Austin. A quorum finally did appear, however, in the August heat of that Texas summer of 1910, the Legislature wilted and couldn't manage to ratify the Sixteenth Amendment properly. Not that it mattered, the Texas State Constitution listed the purposes for which tax burdens could be imposed by the Legislature and the federal government wasn't one of them.

The last stop on my swing through the Deep South, fittingly, was the State of Arkansas. Arkansas was another State whose Legislature, at first, rejected the Amendment and, then, later made a showing of ratifying. Because of this initial rejection, Arkansas became the subject of a lengthy discussion by the Solicitor in which he laid out an argument in justification of accepting that State as having ratified, the logic of which was, at best, vague. The Solicitor contended that official notice of a rejection did not constitute a final official notice because it was a notice of a rejection which could be later changed to a ratification, however, an official notice of a ratification was a final official notice because a ratification could not later be changed to a rejection.

By now, the odds had narrowed considerably on the probability of merely having been through a streak of States which had not properly ratified. The count had reached thirteen, almost a third of the States which had purportedly ratified the Sixteenth Amendment. When I returned home, my head was loaded with the disturbing history which had been revealed in the pages and pages that I had read. I unloaded on my wife, going on and on at great length about these discoveries, and she began to long for the quiet solitude she had when I was out nosing around in dusty, old books. I began to long for the dusty, old books. I was definitely hooked, but, like any addict will tell you, funding your habit is always a problem. The next tour took me to places that were a little closer to home. Having been raised in Illinois and having lived here all of my adult life, it was my belief that Midwesterners, even Midwestern legislators, had to be more stable and more honest and more reliable than the packs of thieves in the States that had already been visited. They were reliable alright. They were just as dishonest as the rest, and, worse, they went about their dirty business in a relatively dull fashion.

In Kansas, the legislators knew that a two-thirds majority was required in a vote upon an amendment to the United States Constitution and they also knew that, by the Kansas State Constitution, determination of the percentage of the votes was based upon the number of legislators elected, not the number of legislators present. The method that

they used, however, was the latter. Next door, in Lincoln, Nebraska, it was a case of poor synchronization leading to false swearing. The facts sworn to on the certificate sent along with the ratification action were not supported by the journals. In Iowa, the Governor and/or the Secretary of State played games with the Governor's signature and also submitted a certificate falsely sworn to. The Secretary of State of Minnesota came up with a neat solution to any perceived necessity to falsely swear to his State's ratification action. He didn't send one.

Wisconsin is amazing. It's a miracle that State doesn't collapse from the weight of legislation. The legislators in Madison, the capital, have virtually a free ride. They have almost no Constitutional restraints holding them back from passing legislation in any way they see fit. Of course, some Wisconsinites do think the State is in need of a legislative diet, but, maybe what the people of Wisconsin want is what they have. At the time of the purported ratification of the Sixteenth Amendment, the Governor of Wisconsin delivered an address that would warm the heart of any tax collector. He called for putting as big a tax burden upon his constituents as he could have possibly gotten away with, not only talking up the Sixteenth Amendment, but the State income tax and the property tax as well. His justification for urging the Wisconsin legislators to ratify the proposed Sixteenth Amendment was so inane that one would hope that there were puzzled looks and snickers in the Legislature that day. In spite of their perfect setting to do nearly anything their hearts desired without being held accountable, the Wisconsin legislators fouled up in the ratification process anyway.

It was a bit depressing knowing that a legislative situation like Wisconsin has existed in this country for as long as it has, and, so, I went home to recuperate. While on the road or flying, or when resting at a motel or hotel room, my mind shuttled back and forth between pondering the astounding record that had been gathered thus far and wondering, with anticipation, what surprises lay in wait at the next State Capitol. I was no longer surprised by the failure of any particular Legislature to have properly ratified the Sixteenth Amendment, but, the creative manner in which each Legislature went about its work continued to be fascinating. My pocketbook was kind of cash-starved at this point, lined strictly in plastic, so the next jaunt took a short, local route.

Springfield, Illinois. The capital of my home State. A refreshing change from Wisconsin. The legislators in Illinois are constrained by several State Constitutional provisions which control the legislative process. Historically, the courts in Illinois have stringently enforced those provisions. We'll have to see how they react to the failure of the legislators to properly ratify the Sixteenth Amendment. While in Springfield, a side project bore fruit. It seems that the Illinois State Income Tax Act failed of the required State Constitutional provisions, too. We'll also have to see how the courts react to that one.

Traveling eastward, my next stop was Indianapolis, Indiana. There, the Governor, or Secretary of State, apparently didn't particularly like the ratification resolution which had passed the Legislature and sent a different one to Knox.

Twenty States, almost half of those which were claimed as having ratified the Sixteenth Amendment, had been researched and found wanting. Every one of them. I still believed, though, that somewhere out there, in at least a few of the remaining twenty-two States, all of the duties and obligations incumbent upon a righteous ratification had been properly performed.

Red Beckman called me out to Colorado to meet with some people whom he felt might be willing to finance some of the research. We didn't get any money, but, more of the research was finished despite that failure because Red and his Montana compatriots dug down into their pockets.

Colorado is mostly just like that kid named after the capital sings it, they have the Rocky Mountains which are, indeed, very high and they have their air which is very clean. The ratification of the Sixteenth Amendment, though, was dirty.

At this point, Jay Linn started to make his much needed contribution to this research, hauling me around to eleven States in his plane.

From Colorado, it was on to the legendary Cheyenne, Wyoming, headquarters for millions of cowboys, some of them real, most of them via Hollywood. Neither the Legislature, nor the Governor, however, could shoot straight. The Legislature passed upon the title to their resolution, not the resolution and, therefore, not the proposed amendment. The Governor was so anxious to get official notice to Knox, he forgot on what day he had signed the unpassed resolution. At first, the Governor thoughtfully sent a telegram to Knox, but, Knox sent a return telegram telling the Governor that a certified copy of the Wyoming action was needed to ensure compliance with the law. The Governor then, less thoughtfully, sent a set of fraudulent documents to Knox.

South Dakota was the next stop. The Secretary of State of South Dakota took over a year after the purported date of ratification to finally transmit the Legislature's ratification action to Washington, D. C. Perhaps, that was because he was trying to figure out which hand to sign it with. Two different certificates were sent with two different signatures. In North Dakota, a fire destroyed the archival copy of the House Bill to ratify the income tax amendment, which Bill was purportedly passed by that State's Legislature. In the journals, this Bill was also called a joint resolution. The keepers of the records in North Dakota, claim it wasn't either one of those items, but was actually a concurrent resolution and that's why it doesn't appear in the published session laws for that year. Makes for interesting conversation. Nevertheless, the North Dakota State Constitution said, that as a tax measure, it had better have been a bill, just like it said in the journals.

Then, it was on to Big Sky country, Montana, where the legislators told four little lies on their ratification resolution. Red and I discussed, at length, the progress that had been made up to that point in the research. He wasn't surprised by the results; he had been kept apprised of the progress and had expected things to work out about as they had. But, he was amazed at the depth of the fraud and that the count was at absolutely zilch more than half way through. After visiting with Red, it was back home for a much needed rest.

Reading those historical records was more riveting for me than Ayn Rand is for my daughter. Whenever I left a State library or archives, my eyes and back would announce a work stoppage in vigorous protest of unfair labor practices, their comfort having been ignored for eight and nine hours at a crack. As I had during every other pause in this task, I reviewed the material collected during the trip just completed and my mental images of those past events would be played again in my head, new discoveries adding to each story. In some cases, the certified copies of the documents were made by a librarian or archivist in the State facility where the research had been done and then were sent on to my home and had to be reviewed as they arrived. Each time that the documents were

reviewed, I found more and more instances of chicanery and deceit. What they had done was appalling, yet, with all that I had read so far in State after State, I couldn't bring myself to accept the possibility that none of the States had done the job in the manner in which it was supposed to have been done. With only seventeen of the States which had made a showing of ratification remaining to be researched, the decision was made that a call on the National Archives at Washington, D. C. was in order.

Upon entering a State archives and digging into the stacks and the shelves and the microfilm of the great number of volumes and documents, there is a sensation which only other students of history can appreciate. You know that you're going to find something of great interest, some fact, some article, some story which will hearken you back to a previous reality, far removed in some way from today, yet significant enough to affect the present. That sensation is magnified considerably upon entering the National Archives. It's a warehouse for our nation's massive documentary history.

Buried in the basement of that warehouse, I dug up memorandums of the Solicitor of the Department of State under Philander Knox, including the one referred to as "The Golden Key." These memorandums show the completely specious arguments which Knox used as justification for glossing over fatal flaws which the Solicitor admitted were contained in the copies of ratification action of 34 of 38 States claimed by the Secretary as having ratified. The Solicitor embraced a thoroughly perverted and preposterous theory of *stare decisis* which suggested that the acceptance of "errors" in the past vindicated all future "errors" even if there was no investigation into whether those "errors" were, in fact, errors. The only investigation into any of the collection of ratification legislation which had come from the States was that carried out relative to the State of Kentucky. That investigation clearly showed that there was not only no "error" involved, but that there was gross fraud at the State level. They also show that in spite of the overall situation, discussed in the *Opening Argument*—the certified copies to the States, the enrolling of the legislation by each State, the supposed certification by the Executive department of each State—of which both Knox and his Solicitor were very well aware, Knox proclaimed the Sixteenth Amendment ratified anyway when he could not help but know that such a proclamation was totally false.

While at the National Archives, I also obtained copies of the letters and documentation pertinent to the Sixteenth Amendment which had been transmitted back and forth between each State and the Department of State during that period of time. These documents, as you have read, were also quite revealing.

Fortified by the startling revelations uncovered at the National Archives, my journey continued, once again on Jay Linn's private plane, in the State of Idaho at Boise. My perspective changed somewhat after having read "The Golden Key" memorandum. I knew, beforehand, which States had for certain submitted flawed ratification legislation. If the Legislature had enrolled their legislation and the Secretary of State or Governor had reviewed it, there could be no question that the Legislature had purposefully changed the Congressional Joint Resolution from the certified copy received by the Governor. In the Idaho Senate, their ratification resolution was, at one point, declared passed via a vote taken on suspension of the rules. Someone in that body later had the presence of mind to have the vote taken again. However, Idaho had not concurred.

The Legislature of the State of Utah rejected the Sixteenth Amendment.

Jay then flew us into New Mexico. People in Santa Fe, the capital of New Mexico, apparently have no big city hang-ups. At lunch time, the State facilities clear out with nary a soul left behind and nary an entrance left unlocked. Gathering documentation was somewhat hampered in the Land of Enchantment because it's scattered in several places and because getting certification for documents was quite a bit more involved than in other States. New Mexico was one of the States which the Solicitor's memorandum had listed as having "No errors." That may have been correct under the Solicitor's narrowed limits of considering changes only in the proposed amendment and not in the preamble. This was in contrast to the Solicitor's memorandum, referencing the similar problems in the ratification notices of the Seventeenth Amendment from the States, which **did** list "errors" contained in the preamble. Under those more inclusive restrictions, New Mexico also had "errors." New Mexico had other problems as well.

Next, we flew into Phoenix, Arizona. Arizona was another of the States which had committed "No errors," according to the Solicitor. Indeed, the ratification resolution sent to Knox contained no "errors." However, the resolution which actually passed the Arizona Legislature contained several "errors." Had the Solicitor known about Arizona (and, at this point, who can say that he didn't), he might have had to uncork another of his wild pitches at this particular fraud which, as it turns out, had occurred in several of the States. The Arizona House found it necessary to declare an emergency in order to try to pass its ratification resolution. It became apparent that the reason why the House had to declare an emergency was because they were supposed to have passed the resolution the day **before** they voted on it according to the date of signing on that fraudulent ratification document which went to Washington, D. C. A classic case of "I need it yesterday." A not-so-classic case of getting it.

The Governor of Nevada stood in stark contrast to the Governor of Wisconsin. Where the latter was tax-happy, the former didn't seem to have any use for taxes. The Nevada Governor not only apparently failed to submit the certified copy of the Congressional Joint Resolution to the Nevada Legislature, he urged the abolition of one tax and liberal tax relief for another. Following a less than perfect path through the legislative process, the Nevada ratification resolution was, according to the journals, a conglomeration of several resolutions which were then engrossed into a final product sent on to Washington, D. C. Unfortunately, the archival copy of that hybrid engrossment cannot be found at Carson City, Nevada's capital. It might have been very interesting to read that document. The Secretary of State of Nevada couldn't find that document either, it seems. The certificate which he sent to Knox indicated that Knox's copy was a copy of a copy, which, of course, is not valid under the rules of best evidence—the location of the original has to be fixed in order to be able to use a copy. The location of the original was, and is, unknown.

From Carson City, we flew to Sacramento, California. The Legislature of California exhibited a legislative quirk which might help to explain what they did in their version of How to Amend Your Supreme Law of the Land. During that same session, the legislators voted to suspend their State Constitution in order to consider a bill for the appropriation of **contingent** expenses. Contingent, according to Webster's, means "likely but not certain to happen." If contingent expenses could have had that kind of unsettling effect on those guys, you might expect that an amendment to the United States Constitution would really have gotten them shook up. And it did. Their proposed

amendment was hacked up more than that of almost any of the other States. They even called it the "eighty-sixth" amendment. A tremor must have hit the Capitol building. When it came time to send a copy of the ratification action to Knox, the California Secretary of State, Frank C. Jordan, sent an uncertified copy along with a copy of the journals recording the action. Knox sent a response by mail telling Jordan that a certified copy of the action under the Great Seal of the State was necessary. Jordan then went into deep space, and six months later, returned a copy to Knox that was neither certified nor under the great seal.

Leaving the certified cadets of California, Jay and I made our final stop together, Oregon. The Oregon legislators seemed tame compared their neighbors to the South. Their failure to ratify was one of those plain, vanilla failures.

So, I left the West Coast with nearly three-fourths of the States under my belt. I knew now that a massive fraud had been perpetrated upon the people of this nation. Even if all the remaining States were found to have properly ratified, there was no escaping the certainty that a conspiracy to ratify the Sixteenth Amendment at all costs had existed at that time. Many people had urged me to reveal what this research had shown at many points prior to this. And they were still urging me to do so, however, my background had taught me that any presentation of evidence must be as complete as is possible. That's why the work had to continue and could not be brought forward just yet.

At a secondary level, my faith in the existence of, at least, some bravely honest legislators had dwindled down to Mother Hubbard proportions. I wanted to see the white knight.

Back on the East Coast, George Sitka's son, David, volunteered to chauffeur me all the way down to Florida. We left for New Jersey early on a Monday morning, starting a whirlwind tour of the Atlantic States.

If you've ever watched an older movie and seen the early work of an actor who later became a big star, you might be interested in the New Jersey "ratification." Though he wasn't the Governor when the whole process started, Woodrow Wilson, next President of the United States, was the Governor of New Jersey when it came to an end. The copy of the ratification resolution, transmitted to Washington, D. C. on behalf of the Garden State, was indicated as having been signed by Wilson but not by either of the presiding officers of the Legislature. In addition, the vote in the New Jersey Senate was only 57% in the affirmative.

Next, we motored on to Annapolis, Maryland, home of the Naval Academy where strict attention is paid to the tiniest detail. That's appropriate. The Maryland Legislature paid strict attention to the tiniest detail as well. Maryland's ratification resolution was printed in full no less than seven times in the journals, representing the seven times that the resolution was read and each time it was printed and read exactly the same as every other time, as is proper. The resolution sent to Washington D. C. contains no less than twenty-nine changes from the resolution which passed the Legislature. A Naval Academy plebe who showed up with twenty-nine changes to his uniform from regulation would probably be told that he should have stayed in his quarters until he got it right. The ratification resolution of the Maryland Legislature should have stayed in Annapolis until they got it right.

After finishing up in Maryland, David and I raced down to Tallahassee, Florida, where the Legislature had rejected.

We then traveled inland to Montgomery, Alabama. The Alabama Legislature was one of the few in session at the time of the transmittal of the certified copies of the Congressional Joint Resolution and they wasted no time making an attempt to ratify the amendment. As the first, it might be expected that they would be a little ragged, and they were. They didn't even have the date on which the Congressional Joint Resolution had passed correct or complete. From Montgomery, we went to South Carolina.

South Carolina was another State in which the Governor and/or the Secretary of State didn't particularly care for the resolution which was said to have passed the Legislature. So, nineteen changes were made to that resolution, the Secretary of State swore up and down that that was an exact copy of the one which had passed the Legislature and it was shipped off to Philander. The Secretary of State of North Carolina was in a similar position—they only made nine changes to their Legislature's resolution.

We left the Carolinas and headed up the coast to Virginia. That State rejected.

David dropped me off at the airport in Richmond and then left for home. I did, too. My very long journey was nearing an end. Only six States remained to be researched. Would there be any in those last six which had properly ratified? None of the States which the Solicitor had listed as having committed "No errors" had properly ratified and every other State, thus far, had not only committed the cardinal legislative sin of amending the amendment but had also committed others. Some of them had committed such blatant fraud that it was frightening to see. And, it was still surprising to see it with such frequency. Although I didn't know it at the time, the last six would finally demonstrate to me that nothing on the face of the earth is lower or more despicable than a politician.

The relatively short trip to Michigan was delayed for one reason and then another, but, I finally got there. And it was well worth the effort. The Michigan Legislature really did it up brown. And on parchment paper to boot. The copy of the resolution which the Secretary of State sent to Washington, D. C. is the hands down winner of the Most Impressive Visual Presentation Award. (see Appendix) You could easily expect that the original of such a magnificent copy would be a treasured item. Surprise, surprise—it is nowhere to be found.

I then swung down to Ohio. The alleged State of Ohio is something of an incredible story all by itself. The process of admitting a State into the Union is a two-part legislative process which, unfortunately, for everyone who is an Ohioan, did not take place until 1953 and even then was never completed. Ohioans should probably consider naturalization, or maybe after reading the shameful history recorded in this book, they might want to consider staying the way they are, citizens of a territory. The copy of the resolution sent to Knox in the name of the Ohio Legislature was sent without the Great Seal of Ohio attached. Unlike the situations in the States of California and Wyoming, Philander Knox did not send the Secretary of State of Ohio a letter informing him that a certified copy under the Great Seal was necessary to conform to Section 205 of the Revised Statutes. Perhaps that was because Ohio's transmission came twenty-two months after the supposed passage of the resolution by the Legislature. Perhaps it was because the signature on the letter accompanying that document did not match the previous specimen which Knox had in his possession. Knox wasn't exactly the kind of guy who would go out looking for trouble, especially if there was a good chance that he'd find it.

After Ohio came West Virginia. West Virginia was a State which had at first rejected and later made a showing of ratification. Had they sent a copy of their action shortly after it had supposedly occurred, West Virginia would have been included in the official count. Instead, after it was too late to matter, an unidentifiable someone sent an uncertified copy of their pitiful ratification resolution to an unidentifiable other who apparently sent that copy on to persons unknown in the Department of State, along with a half-hearted, feeble letter expressing a mild regret that West Virginia wasn't included. I felt like I had just been given a limp handshake.

I returned home thoroughly disgusted. Having been to forty-five States in all, the record in those States was an astounding indictment and that record had gotten to me. The men responsible for the outrage of the Sixteenth Amendment were reprehensible. They were deceitful. They were inveterate liars. They weren't concerned in the slightest with the welfare of their constituents. They were too busy making deals, conspiring together to save their own political hides. They were too stupid and insensitive to comprehend what they were doing. The final three States would close a chapter in my life that made me feel stained by having gotten to know such men.

I planned to drive to Missouri and then Oklahoma. I'd have to fly to Washington.

When I got to Missouri, I thought, OK, Missouri, show me, show me something noble, anything. It was not to be. They had no surprises, only the same baloney that I had seen over and over again in the preceding year of research. The Missouri Legislature amended the amendment, violated their own Constitution in any number of ways, failed to have the Governor sign the resolution. In short, they showed me nothing that I hadn't seen before. Same old, same old.

In Oklahoma, the Legislature had completely butchered the proposed amendment. That version of the Sixteenth Amendment, more clearly than any of the other altered versions, turns the Solicitor's contention about "errors" into so much gibberish, because that's what the Oklahoma version is, gibberish. It was gibberish when it was composed by some Oklahoma legislator, it was gibberish when the House adopted it, it was still gibberish after it was amended by the Oklahoma Senate, it was gibberish when it was enrolled and it was gibberish when the Secretary of State of Oklahoma checked it for accuracy before it went out the door. The Solicitor could only have had nightmares about the gremlins in the Oklahoma Legislature.

The State of Washington. One last time. Was Washington a fitting end to my journey? There might have been other States which would have provided more of a climax. There were certainly others which had gone much further out of their way to violate every legislative stricture known to human kind. There were others which had been much more obvious in their criminal behavior. But, Washington State was a fitting end. That State's action had been the subject of one of the Solicitor's most damning memorandums. In that memorandum, he exposed his complete and total knowledge of the problems which were had by the supposed ratification action of that State. He showed that he had carefully analyzed the Constitution of that State. He knew full well that it was a necessity that the Governor had to be presented with the ratification resolution. Yet, he tried to artfully dodge the bullet which was out there somewhere. The Solicitor played hear no evil, see no evil and speak no evil with the Supreme Law of the Land and it was no more sickeningly portrayed than in the case of Washington.

And, so, I came home for the last time. What had I achieved? I had visited the 48 contiguous States. I had eaten more meals away from home than I would ever care to again in that span of time. I had gathered over 15,000 documents and had read untold thousands over and above that. I had met a lot of friendly, helpful people in each State.

There are a lot of people who say I've done something wonderful and would like to do something wonderful for me. I'm sure there are some who would like to do something terrible to me. It's a little hard to objectively see what it is that I have done. I feel a sense of accomplishment. I know that, if used properly, the evidence that has been gathered can do a lot of good. The truth is always good.

But, I have seen an awful thing. It was a bit like watching forty-eight episodes of the Lone Ranger in which the bad guys win every single time. A nation that has been deceived by a handful of depraved men, whose utterly wicked deed has spawned ever greater and greater depravity in the subsequent administration of that deed. And the character of the entire nation has been subverted by this deed. Do we, as a nation, have the moral fortitude to rise up and eradicate the uncontrolled monster that has been created in our midst? The facts have now been laid before you and the choice is for every one of you to make.

Comments

Constitutional Intent

The American people are being told that the Constitution of the United States of America is old and outdated and must be changed. This observation is perfectly legitimate for anyone who is not a governmental official. Anyone who is a tax-consuming public servant cannot make such a statement in an official capacity. Each and every public servant is required to take an oath to uphold and defend the Constitution of the United States of America. For a public servant to publicly discuss or actively work to undermine the Constitution is a conflict of interest of the highest order.

It must be remembered that the Constitution of the United States of America is a lawfully binding contract. It is a contract which was designed to implement a very clearly defined political philosophy of the supremacy of the individual and of the subservience of the governmental official to the individual.

The founders of this nation knew that it was impossible for individuals and government to be free simultaneously. They knew that for an individual to be free, government must be a servant. If government was to be free, the individual would be the servant. History supports this logic. When government controls the individual, government is master and the individual is servant. The Constitution of the United States of America was designed to create a government that would be a servant to the individual.

They did not wish to create another situation in which a tyrant like King George III could flourish. The American Revolution was fought because King George III wanted to be free to do as he pleased. And what pleased him was forcing the Colonists to be his servants. The King's political philosophy provoked the American War for Independence. The men who fought and won that war had no desire to allow another tyrant to do as he pleased. The Constitution that they designed was clearly intended to create a situation in which government served the individual. This intent of the Constitution has been jeopardized by the fraudulently ratified Sixteenth Amendment. Because it is incumbent upon every public servant to uphold and defend the Constitution, they must not enforce anything which has been fraudulently appended to that instrument to defeat its intent.

This is the purpose of the oath to which every public servant is required to swear. The judges, prosecutors and I.R.S. agents who enforce THE LAW THAT NEVER WAS violate their oath. The intent of the Constitution is violated whenever a public servant demands payment of income tax from an individual. If the personal income tax is mandatory then government is master and the individual has become its servant.

There is nothing old or outdated about the Constitution of the United States of America, if you adhere to the same political philosophy of freedom as those who fought and won the American War for Independence. Those who wish to change our Constitu-

tion must be questioned carefully. Do they want a situation in which the government has become a tyrant, forcing the people to serve a tyrant or do they want a situation in which free individuals are served by government?

In order to maintain our freedoms, we must not tolerate any public servant who, knowingly or unknowingly, would violate his or her solemn oath to uphold the Constitution. Judges, prosecutors, I.R.S. agents and politicians have repeatedly violated their oaths of office without fear of prosecution or of any indignant response from the American people. These criminal tax-consumers must be prosecuted if we are to return our lawful government under the Constitution. Only through the determination of an aroused public can this happen, and it can happen.

If you are not registered to vote, you must become registered. While it is important that you vote on election day, it is absolutely vital that you be available for Grand Jury or Petit Jury duty and you can only do so by having your name on a voter registration list. Jury selection is by lot from voter registration lists. It is also vital that the American people come to an understanding of the power of their vote on a jury. Your vote on a Grand Jury can help bring about an indictment of an unfaithful public servant. Your presence on the Grand Jury can be used to influence your fellow Grand Jurors to investigate corrupt, dishonest public servants. This is not only a valid use of the Grand Jury, it is a necessity. If you are on a Petit Jury you can vote to convict a servant who has violated his oath, and you can vote to acquit an individual who is being prosecuted by a public prosecutor who insists on enforcing the fraudulent income tax laws.

Your Grand Jury vote can also be used to stop the indictment of anyone who is being charged with violating THE LAW THAT NEVER WAS. One informed juror on every jury can stop all convictions of those who are tried for violating THE LAW THAT NEVER WAS. If you are called for any kind of jury duty, you must not indicate in any way that you have read this book and have become informed. The judges and prosecutors are your servants but they are the masters when they have uninformed jurors. These servants will attempt to remove all informed people from any jury. Knowing this, you must make every effort to appear as though you are uninformed until you are in a position to cast your vote for freedom and liberty.

If you are called to serve on a jury they will ask that you take an oath. Do not hesitate to take the oath. If you object to the oath they will not let you serve. You cannot exercise your power as master until you are on a jury voting for freedom and you must not allow yourself to be denied your rightful power. One of the best ways to stop our unfaithful servants from enforcing THE LAW THAT NEVER WAS is to deny them the indictments and convictions which are used to keep the American people subservient to them. For many years, uninformed and easily manipulated jurors have been used to put innocent people in prison. This outrage must end.

Unfaithful and treacherous public servants have enforced THE LAW THAT NEVER WAS by using the votes of weak, uninformed jurors on Grand and Petit Juries. Indictments and convictions of innocent individuals, who were wrongfully and unlawfully accused of violating THE LAW THAT NEVER WAS, have generated fear in the hearts and minds of the American people. The American people must now put a greater fear in the hearts and minds of judges, prosecutors, I.R.S. agents and politicians by using our informed votes to indict and convict any servant who violates his oath to uphold and defend the Constitution of the United States of America and its intent.

The Churches and the Eternal Choice

The story of the fraud of the 16th amendment, revealed in this book, will cause a great division in the religious world. There are thousands of religious cults and creeds (Methodists, Catholics, Mormons, Baptists and etc.) that share one area of common ground. Almost without exception, they have tax-exempt status, while teaching that our government is Caesar. They also teach that our government is a higher power and we must pay whatever taxes are demanded.

When the evidence of massive fraud by our tax-consuming public servants is exposed, our religious leaders will be forced to make a momentous choice. Tax-exempt status has become a gold mine of contributions for most of the larger religious organizations. Will these organizations defend the fraud of the personal income tax to protect their source of funds? How many religious leaders will confess that fraud is evidence of evil and that, therefore, our governmental officials and the power that they represent are wicked? Will our ministers still teach that our government is Caesar and that a wicked Caesar is a higher power? Will our ministers remain under the control and domination of this Caesar? Or, will they trust in God in whom they profess to trust?

The choice between good and evil will be clearly defined. What choice will the minister make if his financial support was generated by a tax-exemption granted by evil and wicked men fraudulently administering government? What choice will a religious organization make if its prosperity and even its very existence depends upon tax-exempt contributions?

This book, and its documentation proving the fraud of the personal income tax, will give an opportunity to the American people to judge the performance of their public servants. The people will also be able to measure the character and faith of our nation's religious leaders. The Scripture says, "by their fruits ye shall know them." (Matt. 7:20)

A Warning to I. R. S. Agents!

Many people have noted the ominous similarities between the Nazi Gestapo, the Soviet KGB and our I. R. S. These parallels need to be explored. The fraud of the Sixteenth Amendment and the personal income tax is now a documented fact. I. R. S. agents have been enforcing THE LAW THAT NEVER WAS. This means that I. R. S. agents have been lawless and their lawlessness is now exposed. We must now be concerned about what happens when the victims of I. R. S lawlessness demand vindication and recourse.

Many Gestapo agents who survived World War II were captured and then tried by a World Court. Their attorneys built a defense on the premise that these Gestapo agents had obeyed the orders of their superiors and that, therefore, they were innocent by reason of their having not initiated the orders. The World Court found most of the defendants guilty and many were sentenced to hang. These Court decisions clearly indicate that each and every defendant had violated his own conscience, in other words, each agent's conscience was a 'Higher Law' than any order from a superior no matter how legally well founded that order may have been. The Gestapo agent who enforced a perversion of the true law was held personally liable. If to obey an order from a superior violates a man's conscience, a moral choice must be made. It was a World Court which tried the Gestapo but the same principles should hold true in this matter.

Fear is one of the most destructive weapons man can use against his fellow man. It is a matter of public record that the Commissioner of the I. R. S. has recommended the use of this weapon against a variety of people in our nation. The well-planned and premeditated use of this weapon must not go unchallenged. Many I. R. S. agents have stated they do not like doing the things that they do, but they obey the orders of their superiors anyway. Are these agents violating their conscience as they destroy families, businesses and people? Have I. R. S. agents made the same mistake made by the Gestapo agents who were executed for their crimes?

We will not try to prognosticate the legal ramifications of THE LAW THAT NEVER WAS. We will defend I. R. S. agents right to a Grand Jury indictment and a Jury trial. We will also try very hard to properly inform the members of the Grand Jury and Petit Jury. We wouldn't want I. R. S. agents to be victims. We want them to have justice.

A Warning to Judges and Prosecutors!!

THE LAW THAT NEVER WAS contains evidence of criminal acts committed by public servants. The people of this nation must observe how our judges and prosecutors will react when they are confronted with the truth and facts of the ratification of the Sixteenth Amendment and, consequently, of their gross ignorance of the true law. Will they continue the fraud and obstruct justice? Will there be an attempt to cover up the fraud of the Sixteenth Amendment? Will they be big enough and honest enough to admit that they have sent people to prison for violating a law that has never existed?

Watergate was minor compared to the enormous cover-up which will result from the wide reading of this book. Our Federal judges were intended to be a check against the prosecutors, who are part of the executive branch, and prosecutors were to be a check against the judges, but, in tax cases, neither is checking the other and both gang up on the defendant. The transcripts from past income tax prosecutions are the evidence which will come back to indict and convict those whose arrogance is in direct proportion to their ignorance. The Sixteenth Amendment has been proven to be a fraud using the government's own documents.

If these tax-consuming public servants reject and oppose the truth of the Sixteenth Amendment, they will have committed another crime. It is called, 'Misprision of Treason.' The 5th edition of Black's Law dictionary defines this crime as—The bare knowledge and concealment of an act of treason or treasonable plot by failing to disclose it to the appropriate officials; that is, without any assent or participation therein, for if the latter elements be present the party becomes a principal. 18 U. S. C. A. No. 2382.

Judges and prosecutors must now be put on notice by the American people that any attempt to cover up or stonewall this mass of irrefutable evidence will be answered with vigorous prosecution. We must demand no less.

Appendix

S. J. Res. 40.

Sixty-first Congress of the United States of America;

At the First Session,

Begun and held at the City of Washington on Monday, the fifteenth day of March, one thousand nine hundred and nine.

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

"ARTICLE XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

Speaker of the House of Representatives.

Vice-President of the United States and
President of the Senate.

S. Con. Res. No. 6.

Passed July 27, 1909.

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Sixty-first Congress of the United States of America;

At the First Session,

Begun and held at the City of Washington on Monday, the fifteenth day of March, one thousand nine hundred and nine.

CONCURRENT RESOLUTION.

Resolved *by the Senate (the House of Representatives concurring)*, That the President of the United States be requested to transmit forthwith to the executives of the several States of the United States copies of the article of amendment proposed by Congress to the State legislatures to amend the Constitution of the United States, passed July twelfth, nineteen hundred and nine, respecting the power of Congress to lay and collect taxes on incomes, to the end that the said States may proceed to act upon the said article of amendment; and that he request the executive of each State that may ratify said amendment to transmit to the Secretary of State a certified copy of such ratification.

Attest:

Charles G. Bennett
Secretary of the Senate.

Attest:

J. Kerr Boyd
Clerk of the House of Representatives.

H. B. 113. An Act to amend Section 3490, sub-section 22, of the Kentucky Statutes, relating to Charters of cities of the fourth class.

Which bills were severally read the first time and under the Constitutional provision and Rules of the Senate were ordered printed and placed upon the Calendar for further reading on a subsequent day.

A message was received from the House of Representatives, announcing that they had adopted a Resolution, entitled, viz:

H. Res. 4. Resolution ratifying the 16th Amendment to the Constitution of the United States.

On motion of Mr. Eaton the Rules were suspended and the Senate took up for consideration said Resolution.

Said resolution reads as follows, viz:

Resolution ratifying the 16th, amendment to the constitution of the United States.

WHEREAS, the Congress of the United States on July --, 1909, adopted a joint resolution, proposing an amendment to the constitution of the United States, as follows:

Resolved, by the Senate and House of Representatives of the U. S. A., in Congress assembled, two-thirds of each House concurring therein, that, the following article is proposed as an amendment to the constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several States, shall be valid to all intents and purposes, as a part of the constitution:

Article XVI. The Congress shall have power to lay and collect taxes on incomes from whatever sources derived, without ap-

portionment among the several States, and without regard to any census or enumeration.' And the foregoing proposed amendment having been laid before the Legislature of the State of Kentucky for consideration and action:

Now Therefore, be it resolved by the General Assembly of the Commonwealth of Kentucky: That the foregoing amendment to the constitution of the United States be, and the same is hereby ratified to all intents and purposes, as a part of the constitution of the United States.

2. That the Governor of this State is hereby requested to forward to the President of the United States an authentic copy of the foregoing joint resolution.

And the question being taken upon the concurring in the adoption of said Resolution, it was decided in the affirmative.

The yeas and nays being required thereon were as follows, viz:

Those who voted in the affirmative were—

Beard, P. J.,	Brown, R. B.,	Hubble, R. L.,
Bertram, E.,	Graham, J. C.,	Mathers, Dr. C. W.,
Brown, Gus,	Hogg, E. E.,	Vice, John L., —9

Those who voted in the negative were—

Arnett, B. M.,	Linn, Conn,	Smith, J. T.,
Arnett, L. W.,	Nagle, Chas. W.,	Taylor, E. M.,
Catlett, J. R.,	Newcomb, H. D.,	Taylor, G. A.,
Chipman, N. B.,	Oliver, A. J.,	Thomas, Claude M.,
Combs, Thos. A.,	Ryan, Mark,	Tichenor, Dr. B. F.
Cureton, Nat. C.,	Salmon, R. M.,	Watkins, J. J.,
Dowling, W. E.,	Smith, Hilliard,	Wyatt, G. T.,
Grigsby, B. C.,		—22

Nays: Messrs. Cordell, Davis and Memminger. Total—3.

Absent: Messrs. Beeler, Brownlee, Chapman, Cloonan, Hatchett, Moore, Newell, Potter, and Soldani. Total—9.

The emergency having received a two-thirds majority vote of all the members elected to and constituting the Senate, the President declared same passed.

Senator Thomas reported on behalf of the Committee on Legal Advisory as follows:

MR. PRESIDENT:

We, your Committee on Legal Advisory, to whom was referred Senate Joint Resolution No. 12, same being a proposed amendment to Section 9, Article 9, of the Constitution, having had the same under consideration, beg to report same back to the Senate with the recommendation that it be ordered printed and placed on the calendar under the head of general orders.

J. ELMER THOMAS, Chairman.

Report received and bill ordered placed upon the calendar under head of general orders.

Senator Billups reported on behalf of the Committee on Privileges and Elections as follows:

MR. PRESIDENT:

We, your Committee on Privileges and Elections, to whom was referred House Bill No. 107, have had the same under consideration and recommend that it do pass.

RICHARD A. BILLUPS, Chairman.

Report received and bill ordered placed upon the calendar under head of general orders.

Senator Yeager introduced the following bill:

SENATE BILL NO. 117—BY MR. YEAGER:

An Act for the removal of all officers of the State and its municipalities not liable to impeachment, and providing for procedure therein.

The Senate went into the Committee of the Whole to consider reveneu bills on the calendar, with Senator Davis in the chair.

The President took the chair.

The engrossed copy of House Bill No. 100, as amended by the Senate, was signed bythe President Pro Tempore, Mr. Graham, same was ordered transmitted to the House.

The Committee of the Whole resumed business.

The President took the chair and the Committee of the Whole arose and reported as follows:

MR. PRESIDENT:

We, your Committee of the Whole, having had under consideration House Bill No. 84 and House Bill No. 76, recommend that they be made a special order for 10 A. M. tomorrow.

CLARENCE DAVIS, Chairman.

Report adopted.

Senator Graham introduced the following Concurrent Resolution:

SENATE CONCURRENT RESOLUTION NO. 23—BY MR. GRAHAM.

A Concurrent Resolution ratifying an amendment proposed by the Sixty-first Congress of the United States of America on the 15th day of March, 1909, to the Constitution of the United States and designated as Article 1.

WHEREAS, The Sixty-first Congress of the United States of America at its first session, begun and held at the city of Washington, on Monday, the 15th day of March, 1909, by joint resolution proposed an amendment to the Constiution of the United States, in words and figures as follows, to-wit.:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which when ratified by the Legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

"'Article 16. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.'"

Now, Therefore, be it resolved by the Senate and House of Representatives of the State of Oklahoma, in extraordinary session assembled, such subject having been recommended by the Governor for consideration, that said proposed amendment to the Constitution of the United States is hereby ratified.

The question being shall the resolution be adopted, the roll was called, the vote resulting as follows:

Yeas: Messrs. Allen, Billups, Blair, Colville, Cordell, Cunningham, Curd, Davis, Echols, Eggerman, Franklin, Graham, Goulding, Keys, Landrum, Memminger, Mitchell, Morris, Redwine, Roddie, Russell, Smith, Stafford, Stewart, Strain, Sorrells, Taylor, Thomas, Warren, Williams Wynne and Yeager. Total—32.

Nays: None.

"A RESOLUTION RATIFYING AN AMENDMENT PROPOSED BY THE SIXTY-FIRST CONGRESS OF THE UNITED STATES OF AMERICA, ON THE FIFTEENTH DAY OF MARCH, ONE THOUSAND NINE HUNDRED AND NINE, TO THE CONSTITUTION OF THE UNITED STATES AND DESIGNATED AS ARTICLE SIXTEEN."

Following the enacting clause, amend the first paragraph to read as follows:

"WHEREAS, The sixty-first congress of the United States of America at its first session begun and held at the city of Washington, on Monday the fifteenth day of March, one thousand nine hundred and nine, by joint resolution proposed an amendment to the constitution of the United States, in words and figures as follows: to-wit:

Amend the second paragraph to read as follows:

"Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled (two-thirds of each house concurring therein), that the following article is proposed as an amendment to the constitution of the United States, which when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution."

Amend the third paragraph by inserting after the word "derived" the following: "without apportionment among the several states."

Amend the last paragraph so as to read as follows: "Now, therefore BE IT RESOLVED by the House of Representatives and the Senate of the State of Oklahoma, in extraordinary session assembled, such subject having been recommended by the Governor for consideration, that said proposed amendment to the constitution of the United States of America is hereby ratified.

J. ELMER THOMAS, Chairman.

On motion of Senator Thomas the report was adopted.

House Joint Resolution No. 5 as amended by the Senate was read as follows:

House Joint Resolution No. 5 by Messrs. Wortman of Rogers, Terral of Kiowa, and Graham of the Senate.

A RESOLUTION RATIFYING AN AMENDMENT PROPOSED BY THE SIXTY-FIRST CONGRESS OF THE UNITED STATES OF AMERICA, ON THE FIFTEENTH DAY OF MARCH, ONE THOUSAND NINE HUNDRED AND NINE, TO THE CONSTITUTION OF THE UNITED STATES AND DESIGNATED AS ARTICLE SIXTEEN.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE STATE OF OKLAHOMA:

WHEREAS, The sixty-first Congress of the United States of America at its first session begun and held at the city of Washington, on Monday the fifteenth day of March, one thousand nine hundred and nine, by joint resolution proposed an amendment to the constitution of the United States, in words and figures as follows, to-wit:

"RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled (two-thirds of each house concurring therein) that the following article is proposed as an amendment to the constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution:

Article 16. The Congress shall have power to lay on collect taxes on incomes, from whatever source derived, without apportionment among the several states, and from any census or enumeration.

Now, therefore, BE IT RESOLVED, by the House of Representatives and the Senate of the State of Oklahoma in extraordinary session assembled, such subject having been recommended by the Governor for consideration, that said proposed amendment to the Constitution of the United States of America is hereby ratified.

The question being shall the resolution pass as amended by the Senate, the roll was called, the vote resulting as follows:

Yeas: Messrs. Allen, Billups, Blair, Brownlee, Chapman, Colville, Cordell, Cunningham, Curd, Davis, Denton, Eggerman, Franklin, Graham, Goulding, Hatchett, Keys, Landrum, Memminger, Mitchell, Morris, Newell, Redwine, Roddie, Russell, Smith, Stafford, Stewart, Strain, Sorrels, Taylor, Thomas, Updegraff, Warren, Williams, Wynne and Yeager. Total 37.

Nays: None.

Absent: Messrs. Beeler, Cloonan, Echols, Moore, Potter, and Soldani. Total—6.

The resolution having received a majority vote of all the members elected to and constituting the Senate, the President declared same passed, as amended, by the Senate.

Senator Cordell asked unanimous consent to amend the title to Senate Bill No. 18.

There being no objection the request was granted.

The engrossed copy of House Joint Resolution No. 5 as amended by the Senate was signed by President Pro Tempore, Mr. Graham, same was ordered transmitted to the House.

A message was received from the House transmitting Senate Bill No. 81 by Mr. Eggerman as amended by the House.

A message was received from the House transmitting Senate Bill No. 1 by Messrs. Smith of the Senate and Durham of the House

the Constitution of this State and to provide for the submission of said amendment to the qualified voters of this State for adoption or rejection."

Which was read the first time and referred to the Committee on Constitutional Amendments.

SPECIAL ORDER.

The Chair laid before the House the Special Order of the day,

Being,

HOUSE JOINT RESOLUTION NO. 2.

Of the House of Delegates and the Senate of Maryland, ratifying the amendment to the Constitution of the United States of America proposed by Congress to the Legislature of the several States.

Whereas, It is provided by the fifth Article of the Constitution of the United States of America that Congress whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of said Constitution when ratified by the Legislature of three fourths of the several States or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by the Congress; and

Whereas, By the sixty-first Congress of the United States of America at the first session thereof begun and held at the city of Washington, on Monday, the fifteenth day of March, in the year one thousand nine hundred and nine, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of said

Legislatures shall be valid to all intents and purposes as part of said Constitution, namely:

Article 16. The Congress shall have the power to lay and collect taxes on incomes from whatever source derived without appointment among the several States, without regard to any census or enumeration.

Be it Resolved by the General Assembly of Maryland, That the aforesaid amendment be and the same is hereby ratified and confirmed.

Which favorable report by the majority of the Judiciary Committee was adopted by yeas and nays as follows:—

AFFIRMATIVE.

Messrs.			
Speaker	Andrews	Coyne	Yates
Hayden	Joyce	McQuade	Draper
Crane	Maguire	Beacham	Middlekauf
Willis	Smith	Janetzke	Brindle
Watkins	Cosden	Main	Keedy
Murray, of A. A.	Keys	Melis	Cummings
Tate	Crowley	Carr	Duvall
Ross	Connick	Girdwood	Garrett
Lusby	Thorn	Juerss	Henderson
Digges	Roe, J. P.	Rahe	Abbott
Slye	Phillips	Slemmer	Carl
Benson	Roe, S.	Wilcox	Herpich
Coghlan	King	Grant	Wittig
Fox	Peters	Hogan	Hill
Glantz	Ausherman	Dawkins	Snader
Morfoot	Castle	Marriott	Hesson
Snyder	Hargett	Eldridge	Stoner
Collier	Harris, of F'd'k	Krause	Brown
Rhodes	Wertenbaker	Pairo	Baker
Rose	Archer	Parks	Twilley
Ford	Sullivan	Peusch	Wingate
Byrd	Williamson	Sheckells	Bolden

Total—88.

NEGATIVE.

Messrs.	
Marbury	Hammond

At 10.45 o'clock, P. M.,

On motion of Mr. Benson,

The House adjourned until 12 o'clock, M., Wednesday, March 16, 1910.

Joint Resolution,

January Session 1910,

Chapter 8.

A Joint Resolution

Of the House of Delegates and Senate of Maryland ratifying an amendment to the Constitution of the United States of America proposed by Congress to the legislatures of the Several States.

Whereas, it is provided by the fifth Article of the Constitution of the United States of America, that Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a Convention for proposing amendments, which in either case, shall be valid to all intents and purposes as part of the said Constitution when ratified by the Legislatures of three fourths of the several States or by Conventions in three-fourths thereof, as the one or other mode of ratification may be proposed by the Congress; and whereas, by the sixty-first Congress of the United States of America at the first Session thereof, begun and held at the City of Washington on Monday the fifteenth day of March, in the year one thousand nine hundred and nine, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concuring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of the said Legislatures shall be valid to all intents and purposes, as part of said Constitution, namely;

Article 16. The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Copy of Joint Resolution transmitted to Knox—Maryland

Be it resolved by the General Assembly of Maryland, that the aforesaid amendment be and the same is hereby ratified and confirmed.

Approved; Apr 8-1910

Adam Peeples
Speaker of the House of Delegates.
A. P. Gorman, Jr.,
President of the Senate.

STATE OF MARYLAND, Set,:

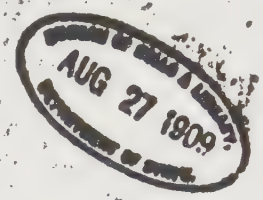
I, Caleb C. Magruder, Clerk of the Court of Appeals of Maryland, do hereby certify, that the foregoing is a full and true copy of A Joint Resolution of the General Assembly of Maryland of which it purports to be a copy, as taken from the Original Joint Resolution belonging to and deposited in the office of the Clerk of the Court of Appeals aforesaid.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the said Court of Appeals, this 21st. day of June, 1910.

Caleb C. Magruder,
Clerk Court of Appeals of Maryland.

Copy of Joint Resolution transmitted to Knox—Maryland

STATE OF WASHINGTON
EXECUTIVE DEPARTMENT
OLYMPIA



August 21, 1909.

Hon. P. C. Knox,
Secretary State,
Washington, D. C.

Dear Sir:

Your kindness of July 26th, enclosing certified copy of a Joint Resolution Proposing an Amendment to the Constitution of the United States, duly received. The same has been transmitted to our Legislature which is now in session.

I have the honor to remain,

Your obedient servant,

M E Hay

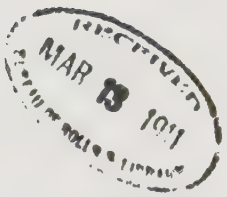
R

Governor.

Letter of acknowledgement to Knox—Washington

Ans 3/14/11

STATE OF WASHINGTON
EXECUTIVE DEPARTMENT
OLYMPIA



March 7, 1911.

The Honorable
The Secretary of State,
Washington, D. C.

Sir:

I have the honor to transmit to you herewith copy of Senate Joint Resolution No. 1, of the Twelfth Legislature of the State of Washington, relative to the income tax.

Yours respectfully,

Governor.

M
Enc.

Letter of transmittal to Knox—Washington

STATE OF NEVADA }
DEPARTMENT OF STATE. } ss.

I, GEORGE BRODIGAN, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the original copy of ASSEMBLY JOINT AND CONCURRENT RESOLUTION, RATIFYING THE SIXTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA (Approved February 8, 1911)

now on file and of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office, in Carson City, Nevada, this 5th. day of March, A. D. 1912

George Brodigan
Secretary of State

By Geo. W. Cowing
Deputy

Certificate transmitted to Knox—Nevada

STATE OF MICHIGAN

House Joint Resolution No. 1.

Introduced by Mr. Stewart.

A JOINT RESOLUTION

Relative to the taxing of incomes and ratifying the proposed amendment to the

Constitution of the United States.

Whereas, The Congress of the United States, after solemn and mature deliberation thereon, has, by a vote of two-thirds of both houses, passed a concurrent resolution, submitting to the legislatures of the several states a proposition to amend the Constitution of the United States, which resolution is in the following words:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution.

ARTICLE XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states and without regard to any census or enumeration.

Resolved, by the Senate and House of Representatives of the State of Michigan, That in the name and behalf of the people of this state, we do hereby ratify, approve and assent to the said amendment.

Resolved, That a copy of this assent and ratification, engrossed on parchment, be transmitted by his Excellency the Governor to the Senate and House of Representatives of the United States in Congress assembled, and to the Secretary of State of the United States.

"We hereby certify that the foregoing resolution was adopted by the House of Representatives, January 19th, 1911.

Speaker of the House of Representatives.

Clerk of the House of Representatives.

"We hereby certify that the foregoing resolution was adopted by the Senate February 23rd 1911

President of the Senate.

Secretary of the Senate

Governor.

Resolution on parchment transmitted to Knox—Michigan

apportionment among the several States and without regard to any census or enumeration.' '

And Whereas it requires the ratification of the Legislatures of three-fourths of the several States to make the proposed amendment a part of the Constitution; therefore,

Be It Resolved, that the Legislature of Delaware ratifies and adopts the proposed amendment to the Federal Constitution;

And be it further Resolved; that the Secretary of State of Delaware be and is hereby directed to notify the Secretary of State of the United States of the action of the Legislature.

And on his further motion was adopted and ordered to the House for concurrence.

Mr. Cubbage, Clerk of the House, being admitted, informed the Senate that the House had concurred in the following Senate Concurrent Resolution:

S. C. R. No. 5.

Senate concurrent resolution, ratifying the proposed amendment to the Constitution of the United States giving Congress power to lay and collect taxes on incomes.

And returned the same to the Senate.

Mr. Marshall gave notice that on tomorrow or some future day he would ask leave to introduce a bill, entitled:

An Act to repeal "An Act to amend an Act entitled 'An Act providing a general corporation law' being Chapter 273, Volume 21, Laws of Delaware, as amended, by authorizing the organization of Boulevard corporations."

On motion of Mr. Ewing, the bill (S. B. No. 28), entitled:

An Act to amend an Act entitled "An Act defining motor vehicles and providing for the registration of the same, and uniform rules regulating the use and speed thereof," being Chapter 120, Volume 25, Laws of Delaware.

Was read a first time.

And a second time, by its title, and referred to the Committee on Public Buildings and Highways.

On motion of Mr. Ewing, the bill (H. B. No. 15), entitled:

An Act to repeal Chapter 150, Vol. 19, Laws of Delaware, entitled "An Act incorporating the extension ditch for the water privileges of the Mifflin Ditch and the Georgetown and Vaughn Ditch and Phipps Ditch.

Was read a first time.

And a second time, by its title, and referred to the Committee on Corporations.

Mr. Pierce on behalf of the Committee on Public Buildings and Highways to whom had ben referred, S. B., No. 6, entitled:

An Act providing for the Registration of Motor Vehicles and the Licensing of Operators, thereof.

Reported the same back to the Senate unfavorably.

Mr. Cubbage, Clerk of the House, being admitted, presented the following Concurrent Resolution, which had passed the House:

HOUSE CONCURRENT RESOLUTION

Be it resolved by the House, the Senate Concurring therein.

That it is the sense of the General Assembly that our State be fittingly represented at the inauguration of Honorable Woodrow Wilson, as President, and be it further resolved that a Committee consisting of, The President pro tempore of the Senate, the Speaker of the House, two Senators, three Representatives, the Adjutant General, and the Quartermaster be and the same are hereby authorized and directed to make arrangements for the proper representation of our State at Washington on March fourth, next.

And presented same to the Senate.

Mr. Ewing moved that the same be taken up and on his further motion was adopted as read and House informed thereof. Mr. Ewing and Carter were named on the part of the Senate.

Mr. Marshall on behalf of the Committee on Charities to whom had been referred, S. B., No. 19, entitled:

Which was given first and second readings and referred to the Committee on Municipal Corporations.

Mr. Cooper, in pursuance of previous notice, asked leave to introduce a bill, (H. B. No. 96), entitled:

An Act in relation to State Licenses.

Which was given first and second readings and referred to the Committee on Revised Statutes.

Mr. Stoops, Secretary of the Senate, being admitted, presented the following Senate Concurrent Resolution, which had passed the Senate:

S. C. R. No. 5.

Senate Concurrent Resolution ratifying the proposed amendment to the Constitution of the United States giving Congress power to lay and collect taxes on incomes:

Be it Resolved by the Senate and House of Representatives of the State of Delaware in General Assmbly met:

That, Whereas the Congress of the United States has proposed an amendment to the Constituion of the United States which provides that "The Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States and without regard to any census or enumeration."

And Whereas, It requires the ratification of the Legislatures of three-fourths of the several States to make the proposed amendment a part of the Constitution; therefore,

Be it Resolved, That the Legislature of Delaware ratifies and adopts the proposed amendment to the Federal Constitution;

And be it further Resolved, That the Secretary of State of Delaware be and is hereby directed to notify the Secretary of State of the United States of the action of the Legislature.

On motion of Mr. Cooper, the bill, (H. B. No. 66), entitled:

An Act to amend Chapter 286, Volume 24, Laws of Del-

[illegible] entitled, "An Act to incorporate Mercantile Trust and [illegible] Deposit Company."

Was taken up for consideration, and on his further motion [illegible] read a third time, by paragraphs, in order to pass the [illegible].

On the question, "Shall the bill pass the House?"

The yeas and nays were ordered, which being taken, were [illegible] follows:

YEAS—Messrs. Allen, Arthurs, Barnard, Bennett, Cook, [illegible]per, Cummins, Grantland, Hammond, Hoffecker, Hous[illegible]ton, King, Lattomus, Lingo, Lynch, Mooney, McCor[illegible]mick, McDonald, Owens, Records, Reynolds, Schneider, [illegible] Stoeckle, Taylor, Wagamon, Mr. Speaker.—28.

NAYS—None.

So the question was decided in the affirmative, and the bill [illegible]ng received the required constitutional majority,

Passed the House.

Ordered to the Senate for concurrence.

On motion of Mr. Taylor, the bill, (H. B. No. 76), entitled:

An Act in relation to the sale of certain school property [illegible] the board of education of the town of Harrington.

Was taken up for consideration, and on his further motion [illegible] read a third time, by paragraphs, in order to pass the [illegible].

On the question, "Shall the bill pass the House?"

The yeas and nays were ordered, which being taken, were [illegible] follows:

YEAS—Messrs. Allen, Arthurs, Barnard, Bennett, Cook, [illegible]per, Cummins, Grantland, Hammond, Hoffecker, Houston, [illegible], King, Latomus, Lingo, Lynch, Mooney, McCormick, [illegible]Donald, Owens, Records, Reynolds, Schneider, Smith, Sto[illegible]. Taylor, Wagamon, Mr. Speaker.—28.

NAYS—None.

So the question was decided in the affirmative, and the bill having received the required constitutional majority,

Passed the House.

Ordered to the Senate for concurrence.

Mr. Stoops, Secretary of the Senate, being admitted, informed the House that the Senate had concurred in the following House Concurrent Resolution:

Be it Resolved by the House, the Senate concurring therein, That it is the sense of the General Assembly that our State be fittingly represented at the inauguration of Honorable Woodrow Wilson, as President, and be it further resolved that a committee consisting of the President pro tempore of the Senate, the Speaker of the House, two Senators, three Representatives, the Adjutant General, and the Quartermaster be and the same are hereby authorized and directed to make arrangements for the proper representation of our State at Washington on March fourth next.

The Speaker appointed the following committee:

Messrs. Owens, Cooper and Grantland.

Mr. Swan, in pursuance of previous notice, under suspension of rules, asked leave to introduce a bill, (H. B. No. 97), entitled:

An Act to change the name of Alfred Victor DuPont to Dorsey Cazenove DuPont.

Which was given first and second readings, and referred to the Committee on Miscellaneous Business.

Mr. Owens, inpursuance of previous notice, asked leave to introduce a bill, (H. B. No. 98,) entitled:

An Act increasing the duties of the County Comptrollers of the several counties.

Which was given first and second readings and referred to the comimttee on Revised Statutes.

Mr. Reynolds, on behalf of the Committee on Appropriations, to whom had been referred (H. B. No. 70), entitled:

An Act making an appropriation for the expenses of the Board of Trustees of the Delaware State Hospital at Farnhurst for the fiscal year ending on Monday immediately preceding the second Tuesday of January in the year of our Lord one thousand nine hundred and fourteen.

Reported the same back to the House favorably.

Mr. Reynolds, on behalf of the Committee on Appropriations, to whom had been referred (H. B. No. 77), entitled:

An Act appropriating the sum of one hundred and ninety-four dollase to Seaford graded school districts Nos. 70, 70½, 102, and 102½, to cover an insufficiency in the amount allowed said districts in the distribution of the State school funds.

Reported the same back to the House favorably.

On motion of Mr. Arthurs the resolution (S. C. R. No. 1) entitled:

Senate Concurrent Resolution ratifying the proposed amendment to the Constitution of the United States giving Congress power to lay and collect taxes on incomes.

Was taken up for consideration, and on his further motion was read a third time, by paragraphs, in order to pass the same.

On the question, "Shall the resolution pass the House?"

The yeas and nays were ordered, which being taken, were as follows:

YEAS—Messrs. Allen, Arthurs, Barnard, Bennett, Cook, Cooper, Cummins, Grantland, Hammond, Hoffecker, Houston, Hunter, King, Lattomus, Lingo, Lynch, McCormick, McDonough, Owens, Records, Reynolds, Schneider, Smith, Stoeckle, Walker, Wagamon, Mr. Speaker.—27.

NAYS—None.

So the question was decided in the affirmative, and the resolution, having received the required constitutional majority,

Was declared Adopted.

Ordered that the Senate be informed thereof, and the resolution returned to that body.

71st Congress, 3d Session | SENATE | Document No. 240

RATIFICATION OF THE CONSTITUTION AND AMENDMENTS BY THE STATES

DATA

ON THE

RATIFICATION OF THE CONSTITUTION AND AMENDMENTS BY THE STATES PREPARED BY THE LEGISLATIVE REFERENCE SERVICE OF THE LIBRARY OF CONGRESS

PRESENTED BY MR. FESS

JANUARY 5 (calendar day, JANUARY 6), 1931.—Ordered to be printed

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1931

S. D.—71-3—VOL 14——34

U.S. Senate Document No. 240, 71st Congress

TABLE V

State	Amendment XVI						Date of ratification
	House			Senate			
	Yeas	Nays	Percentage of yeas	Yeas	Nays	Percentage of yeas	
Alabama	81	0	100	23	0	100	Aug. 2, 10, 1909.[1]
Arizona	33	0	100	Passed.		100	Apr. 6, 3, 1912.[2]
Arkansas	84	2	96	24	6	80	Apr. 22, 17, 1911.[3]
California	Passed.			Passed.			Jan. 31, 20, 1911.[4]
Colorado	63	0	100	30	3	90	Feb. 15, 7, 1911.[5]
Connecticut				Rejected.			(6).
Delaware	27	0	100	Passed.			Feb. 3, 1913.[7]
Florida				Rejected.			(8).
Georgia	129	32	80	23	18	56	July 26, 11, 1910.[9]
Idaho	Passed.			Passed.			Jan. 20, 1911.[10]
Illinois	80	8	90	41	0	100	Mar. 1, Feb. 9, 1910.[11]
Indiana	93	0	100	48	1	98	Jan. 30, 17, 1911.[12]
Iowa	81	0	100	45	3	93	Feb. 24, 22, 1911.[13]
Kansas	81	0	100	25	14	64	Feb. 18, Jan. 19, 1911.[14]
Kentucky	Passed.			Passed.			Feb. 8 or 9, 1910.[15]
Louisiana	101	6	94	Passed.			May 30, June 28, 1912.[16]
Maine	101	0	100	Passed.			Mar. 31, 30, 1911.[17]
Maryland	83	1	98	16	9	64	Mar. 21, Apr. 8, 1910.[18]
Massachusetts	Passed.			Passed.			Mar. 4, Feb. 27, 1913.[19]
Michigan	92	1	98	23	1	96	Jan. 24, Feb. 23, 1911.[20]
Minnesota	89	0	100	49	5	90	June 6, 11, 1912.[21]
Mississippi	85	51	62	28	2	93	Jan. 29, Mar. 7, 1910.[22]
Missouri	118	9	92	30	0	100	Mar. 16, 7, 1911.[23]
Montana	66	0	100	28	0	100	Jan. 30, 11, 1911.[24]
Nebraska	93	0	100	32	0	100	Feb. 1, 8, 1911.[25]
Nevada	46	0	100	18	0	100	Jan. 24, 31, 1911.[26]
New Hampshire	Passed.			20	2	90	Feb. 18, 19, 1913.[27]
New Jersey	49	8	85	12	9	57	Jan. 27, Feb. 4, 1913.[28]
New Mexico	35	0	100	19	1	95	Feb. 3, 1913.[29]
New York	81	42	65	35	16	68	July 12, Apr. 19, 1911.[30]
North Carolina	Passed.			Passed.			Feb. 11, 1911.[31]
North Dakota	98	1	99	48	1	97	Jan. 24, Feb. 16, 1911.[32]
Ohio	100	3	97	31	1	96	Jan. 19, 18, 1911.[33]
Oklahoma	89	2	97	37	0	100	Mar. 4, 9, 1910.[34]
Oregon	45	8	84	25	2	90	Jan. 23, 18, 1911.[35]
Pennsylvania							(36).
Rhode Island	Rejected.						(37).
South Carolina	101	4	95	22	11	66	Feb. 16, 19, 1910.[38]
South Dakota	100	0	100	41	0	100	Feb. 3, 1912.[39]
Tennessee	82	3	96	24	4	85	Apr. 7, 6, 1911.[40]
Texas	106	1	99	28	1	96	Aug. 16, 4, 1910.[41]
Utah	Rejected.						(42).
Vermont	Passed.			13	11	54	Feb. 19, 15, 1913.[43]
Virginia							(44).
Washington	80	1	98	32	5	86	Jan. 26, 1911.[45]
West Virginia	73	0	100	30	0	100	Jan. 31, 29, 1913.[46]
Wisconsin	92	0	100	21	0	100	Feb. 9, May 26, 1911.[47]
Wyoming	48	7	87	24	3	88	Feb. 3, 1913.[48]

Footnotes on facing page.

[1] Alabama House Journal, 1909, p. 157; Alabama Senate Journal, 1909, p. 220.
[2] Arizona House Journal, 1912, p. 134. This amendment passed the senate unanimously. There is no record vote. (Arizona Senate Journal, 1912, p. 127.)
[3] Arkansas House Journal, 1911, pp. 864, 865; Arkansas Senate Journal, 1911, p. 346.
[4] The senate and house adopted a resolution ratifying this amendment without record vote. (California Assembly Journal, 1911, p. 437; California Senate Journal, 1911, p. 323.)
[5] Colorado House Journal, 1911, p. 483; Colorado Senate Journal, 1911, p. 331.
[6] The senate rejected the minority report of the committee on judiciary and federal relations recommending ratification of this amendment on June 28, 1911, by a vote of 6 to 19. (Connecticut Senate Journal, 1911, pp. 1346–1348.)
[7] Delaware House Journal, 1913, p. 803. Delaware Senate Journal, 1913, not available for this study.
[8] Florida House passed H. J. Res. 192, ratifying this amendment on May 21, 1913, by a vote of 59 to 0. (Florida House Journal, 1913, p. 1686.) The senate committee on constitution recommended that the resolution do not pass. May 27, 1913. (Florida Senate Journal, 1913, p. 1745.)
[9] Georgia House Journal, 1910, pp. 735, 736; Georgia Senate Journal, 1910, pp. 281,282.
[10] House and senate journals for this year not available for this study.
[11] Illinois House Journal, 1910, p. 818; Illinois Senate Journal, 1910, p. 199.
[12] Indiana House Journal, 1911, p. 658; Indiana Senate Journal, 1911, p. 126.
[13] Iowa House Journal, 1911, p. 690; Iowa Senate Journal, 1911, p. 567.
[14] Kansas House Journal, 1911, p. 493; Kansas Senate Journal, 1911, p. 89.
[15] The house passed a resolution ratifying this amendment on Jan. 26, 1910, the senate concurring on Jan. 27. The governor withheld his approval, stating as his reason in a letter of Feb. 11, 1910, that the amendment had not been transmitted to the general assembly for consideration. Kentucky House and Senate Journals, 1910, passim. The house then introduced a new resolution ratifying the sixteenth amendment. This resolution passed the house on Feb. 23, 1910, by a vote of 79 to 8. (Kentucky House Journal, 1910, pp. 567, 568.) The senate rejected the resolution on March 15, by a vote of 18 to 17, the president of the senate casting the deciding vote. (Kentucky Senate Journal, 1910, p. 1704.) The State Department records show date of ratification, Feb. 8 or 9, 1910.
[16] Louisiana House Journal, 1912, pp. 177, 178. Louisiana Senate Journal, 1912, not available for this study.
[17] Maine House Journal, 1911, p. 902. Passed the senate without a division. Maine Senate Journal, 1911, p. 697.
[18] Maryland House Journal, 1910, pp. 956, 957. Maryland Senate Journal, 1910, p. 2097.
[19] Massachusetts ratified this amendment without a record vote. (Massachusetts House Journal, 1913, p. 740. Massachusetts Senate Journal, 1913, p. 575.) The house had passed a resolution ratifying this amendment on Apr. 16, 1912, by a vote of 116 to 44. (Massachusetts House Journal, p. 1365.) The senate rejected it on Apr. 25, 1912, by a vote of 14 to 17. (Massachusetts Senate Journal, 1912, p. 1219.)
[20] Michigan House Journal, 1911, pp. 204, 205. Michigan Senate Journal, 1911, p. 307.
[21] Minnesota House Journal, 1912, p. 24. Minnesota Senate Journal, 1912, p. 53.
[22] Mississippi House Journal, 1910, pp. 214, 215. Mississippi Senate Journal, 1910, p. 522.
[23] Missouri House Journal, 1911, p. 1117. Missouri Senate Journal, 1911, p. 606.
[24] Montana House Journal, 1911, pp. 285, 286. Montana Senate Journal, 1911, p. 74.
[25] Nebraska House Journal, 1911, p. 170. Nebraska Senate Journal, 1911, p. 227.
[26] Nevada Assembly Journal, 1911, p. 33. Nevada Senate Journal, 1911, p. 39.
[27] The house ratified this amendment without a record vote. (New Hampshire House Journal, 1913, p. 378. New Hampshire Senate Journal, 1913, pp. 110, 111.)
[28] New Jersey Assembly Minutes, 1913, pp. 93, 94. New Jersey Senate Journal, 1913, pp 107, 108.
[29] New Mexico House Journal, 1913, p. 64. New Mexico Senate Journal, 1913, p. 50.
[30] New York Assembly Journal, 1911, p. 3725. New York Senate Journal, 1911, p. 618.
[31] North Carolina Senate Journal, 1911, p. 106, ayes and noes on previous question, 41 to 1. The resolution passed on third reading without a record vote. North Carolina House Journal, 1911, not available for this study.
[32] North Dakota House Journal, 1911, p. 177. North Dakota Senate Journal, 1911, p. 685.
[33] Ohio House Journal, 1911, p. 80. Ohio Senate Journal, 1911, p. 48.
[34] Oklahoma House Journal, 1910, p. 466. Oklahoma Senate Journal, 1910, p. 465.
[35] Oregon House Journal, 1911, pp. 126, 127. Oregon Senate Journal, 1911, p. 53.
[36] The house passed a joint resolution ratifying the sixteenth amendment on May 10, 1911, by a vote of 189 to 4. (Pennsylvania House Journal, 1911, pp. 2690, 2691.) The senate referred the joint resolution to the committee on judiciary special, where it lay. (Pennsylvania Senate Journal, 1911, p. 2162.)
[37] Senate resolution refusing to ratify this amendment was concurred in by house Apr. 29, 1910. (Rhode Island House Journal, Apr. 29, 1910.)
[38] South Carolina House Journal, 1910, p. 698. South Carolina Senate Journal, 1910, p. 658.
[39] South Dakota House Journal, 1911, pp. 347, 348; South Dakota Senate Journal, 1911, p. 163.
[40] Tennessee House Journal, 1911, p. 769, 770. Tennessee Senate Journal, 1911, p. 529.
[41] Texas House Journal, 1910, p. 192, 193. Texas Senate Journal, 1910, p. 51.
[42] The house rejected this amendment on Mar. 9, 1911, by a vote of 31 to 10. (Utah House Journal, 1911, pp. 606, 607.) The Senate passed the resolution ratifying the amendment by a vote of 12 to 2 on Feb. 17, 1911. (Utah Senate Journal, 1911, p. 256.)
[43] Vermont House Journal, 1913, p. 1017. The amendment passed without a record vote. (Vermont Senate Journal, 1913, p. 823.) Vermont had rejected this amendment on Jan. 17, 1911, by a vote of 45 to 143 in the house (Vermont House Journal, 1910, pp. 563, 564), and 10 to 14 in the senate (Vermont Senate Journal, 1910, p. 415).
[44] The senate ratified this amendment by a vote of 19 to 5 on Mar. 9, 1910. (Virginia Senate Journal, 1910, pp. 651, 652.) The House Journal, 1910, does not show that this resolution ratifying the amendment ever came to a vote.
[45] Washington House Journal, 1911, p. 150. Washington Senate Journal, 1911, p. 229.
[46] West Virginia House Journal, 1913, p. 248. West Virginia Senate Journal, 1913, p. 209.
[47] Wisconsin Assembly Journal, 1911, pp. 193, 194. Wisconsin Senate Journal, 1911, p. 713.
[48] Wyoming House Journal, 1913, p. 145. Wyoming Senate Journal, 1913, p. 117.